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OF BOSTON

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TRIAL

OF

ANDRIES BOTHA,

FIELD-CORNET OF THE UPPER DEINKWATER, IN THE
HAT RIVER SETTLEMENT

FOR

HIGH TREASON,

IN THE

SUPREME COURT OF THE COLONY OF THE
CAPE OF GOOD HOPE,

ON THE

[illegible] MAY, 1852, AND SUBSEQUENT DAYS.

WITH A

[illegible] SKETCH OF THE HAT RIVER SETTLEMENT
AND ADJACENT COUNTRY;

AND

[illegible] OF [illegible] REFERRED TO IN THE TRIAL.

CAPE TOWN:
[illegible] & Co., 30, ST. GEORGE'S-STREET.

1852

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Tremont
BOSTON
Street 148
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55

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139. J Brander ~~proves~~ shews that Botha was not fighting at Balfour

141 Sore

Most unfounded suspicion of the Judge to the prejudice of Botha because he went into the bush being afraid of the Fingoes.

Field Cornet Lavrie whom he so extol at Page 136. has shewn at Page 135 that it was at the hazard of his life violence from the Fingoes that he obeyed the order and repaired to the General.

"the officer drew his sword" to protect and bring him into the presence of the General.

That Botha would have been injured injured by the Fingoes is the opinion of Mr Reed junr. Sore

At Page 27. The Fingoe Manger says we were afraid of the Hottentots that they would kill us. Commandant Groepe received & protected them. They the Fingoes complained to him of Botha.

The commandant ~~Botha~~ Groepe is confident that Botha was not there (137) also vide 74 Magistrate Wienand what he says of Klaas Mafee.

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TRIAL

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ANDRIES BOTHA,

FIELD-CORNET OF THE UPPER BLINKWATER, IN THE
KAT RIVER SETTLEMENT,

FOR

HIGH TREASON,

IN THE

SUPREME COURT OF THE COLONY OF THE
CAPE OF GOOD HOPE,

ON THE

12TH MAY, 1852, AND SUBSEQUENT DAYS

WITH A

TOPOGRAPHICAL SKETCH OF THE KAT RIVER SETTLEMENT
AND ADJACENT COUNTRY;

AND

AN ABSTRACT OF DOCUMENTS REFERRED TO IN THE TRIAL.

CAPE TOWN
SAUL SOLOMON & Co., 31, ST. GEORGE'S STREET

1852

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Topographical Sketch

OF THE

AT RIVER SETTLEMENT,

& ADJACENT COUNTRY.

mpiled from the best Authorities by
M. Woodifield C.E.
Swoin Govt. Surveyor,
May 1852.

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TRIAL

OF

ANDRIES BOTHA,

FIELD-CORNET OF THE UPPER BLINKWATER, IN THE KAT RIVER SETTLEMENT,

FOR

HIGH TREASON,

IN THE

SUPREME COURT OF THE COLONY OF THE CAPE OF GOOD HOPE,

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TOPOGRAPHICAL SKETCH OF THE KAT RIVER SETTLEMENT AND ADJACENT COUNTRY;

AND

AN APPENDIX OF DOCUMENTS REFERRED TO ON THE TRIAL.

CAPE TOWN:
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[ERRATA.—Page 91, 17th line from top, for "23*d January*" read "25*th January*."—Page 199, 26th line from top, for "24*th March*, 1851," read "24*th May*, 1851."]

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INTRODUCTORY NOTE.

THE following pages, made up chiefly from the columns of the *Cape Town Mail*, contain a report of the trial of Field-cornet ANDRIES BOTHA, for High Treason.

This case assumed importance from the long, faithful, and highly meritorious conduct of the prisoner, as a public officer, in charge of a district during peace, and in command of a body of men during war, when his loyalty was as devoted and unimpugned as his bravery was distinguished.*

Nor was this all. "The case of 'the Queen *versus* Andries Botha,'" says the editor of the *Graham's Town Journal*,† "is in reality the case of 'The Colonists *versus* the Kat River Settlement.'" Without endorsing the opinion of this partisan journalist to the full extent of the terms in which it is conveyed, it is enough that we have the admission extorted from him, it may be by the force of truth, that the late criminal prosecution of Botha, was against him less as an individual than as an inhabitant of the Kat River Settlement. This consideration alone will secure for it a degree of attention throughout the civilised world corresponding to the interest felt in the welfare of the coloured classes generally. If the object of the prosecution was thus two-fold, the conviction of the man and the conviction of the community of which he was a member—for such, "in reality," the representative of that section of the colonists to whom Botha owes chiefly the late criminal proceedings against him, would have us to believe—we cannot greatly err in viewing those proceedings, as they affect the interests of each respectively.

"Who"—asks the *Journal*—"who is Andries Botha? The answer is, a Field-cornet in the Kat River, admitted by all to have exercised there extensive influence." The public voice then seeks a reply to the question, "How came the man, whose intrepidity and military skill, extending nearly over the whole of his active life, have won the highest eulogiums of his superior officers, and whose deeds of valour, after the tragic affair at Burn's Hill, and in the fastnesses of the Amatola, are still fresh in memory—such a man as Botha, now in his old age and with a shattered constitution, with everything to lose and nothing to gain—how came he to be suspected of having committed himself to so wicked and desperate an enterprise as that alleged against him?" The apparent enigma admits of easy solution.

It was known to the Colonial Government, and to many in the community, that the feelings of the aged Field-cornet had been violently outraged by the burning out of the *Gonahs*, in his field-cornetcy, in June, 1850, by the *Kafir* police under the direction of the then Resident Magistrate,—one of these men, filled with that spirit of revenge peculiar to a barbarous foe, crying out in fiendish triumph, "To-day we drive Botha from the Blinkwater, as he drove us from the Amatola last war;"‡ and more recently outraged by an attack made upon him in January, 1851, when in the discharge of the loyal duty of escorting the present Magistrate, J. H. Wienand, Esq., to Fort Beaufort. §

A portion of the frontier colonists, probably not a large one, seemed to exult in the hope that Botha, driven to desperation and stung to

* Statement of Lt.-Col. Sutton, p. 147. Evidence of Sir Andries Stockenstrom, p. 148.

† *Graham's Town Journal*, 29th May, 1852.

‡ Letter of Field-cornet Andries Botha to Governor Sir H. Smith, dated Buxton, 23rd June, 1850. Evidence of Rev. James Read, p. 144.

§ *Graham's Town Journal*, 8th February, 1851.

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madness, would commit himself to some overt act of rebellion, which might furnish or strengthen the pretext for the confiscation of the Kat River Settlement; whilst Botha's own personal friends, or the friends of his race, watched his conduct in the peculiarly trying circumstances of his position, at the breaking out of the present disastrous war, with the most earnest solicitude. On the one hand was confidence arising from the remembrance of forty years' fidelity, and on the other, the very natural apprehension that, smarting under the sense of unmerited ill-usage, he might be ensnared and overcome by the existing temptations. They still believe that confidence not to have been misplaced.

A regard, however, to the sacred interests of truth prompts the admission that Botha's conduct does not admit of an unreserved justification. In one instance, at least, it was undoubtedly culpable:—he, under fear of his life, as he himself says—nor does it seem to have been without cause—from the Fort Beaufort Burghers and the Fingoes, who were accompanying Major-General Somerset to Philipton, where he, Botha, had taken up his abode—absented himself from muster, and took refuge in the open country for three days. When he thought it safe to return, he delivered himself up to the authorities, by whom he was imprisoned at Fort Hare for six weeks, to take his trial before the Court Martial then sitting, and at the end of that time was set at liberty, as no charges could be found against him.*

Botha had to complain of no common rigour during the early part of his imprisonment, when, though unconvicted and untried, his aged limbs were laden with fetters,† and thus indignity was added to the grievous wrong he suffered. It was enough that he belonged to a proscribed race, and was too weak to defend himself, to tempt to the perpetration of fresh injustice. A statement made by *Mango*,§ before a Civil Commissioner and Justice of the Peace, previously to Botha's former imprisonment, and which formed the second count of the late indictment against him, was published in the colonial newspapers, and, his guilt being assumed, was referred to in a public despatch.‡ Unwarrantable as was this procedure, it does not stand alone: it has been since followed up by a degree of persecution, by the insertion of letters and editorial remarks in the Government journals,§ which finds no parallel in the history of this colony.

In September or October, 1851, Botha was again apprehended, and in March following, was brought down to Cape Town for trial. The indictment § served on the prisoner on the 18th April, after a fifteen months' virtual impeachment, consisted of four counts only; and as these had, as their basis, the most unsatisfactory and conflicting statements, it was felt that the prosecution must break down for the want of evidence. The criminal sessions commenced. The prisoner, conscious of his innocence and of his being able to establish it in the eyes of his country, longed for the trial which he doubted not would restore him to the bosom of his family and to society. A new indictment || was then served upon him, containing *two* additional counts,—one of them, in the estimation of the Public Prosecutor and of the Court, the *cardinal* count—and founded on evidence given by *men under the sentence of transportation for life, at the Convict Station, Bain's Kloof*,—men dead to society, and alive in law only for the purpose of giving evidence to criminate a fellow man. The prisoner, although seven hundred miles from the spot where the offences alleged against him were said to have been committed, and where alone rebutting evidence could be obtained, and notwithstanding the fearful disadvantages under which he laboured, —determined to stand his trial. Did he miscalculate on the justice of

* Col. Sutton's Statement, p. 147. † Botha's Statement in Court, p. 227. ‡ See Despatch from Governor Sir H. Smith to Earl Grey, 4th July, 1851, in Blue Book, 3rd February, 1852, p. 72. § See Appendix. || p. 1.

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his country? The Verdict of the Jury and the Evidence* upon which it has been given, are now before the public, which is quite competent to pronounce on the relevancy of the one to the other. Let impartial men judge. It may be doubted whether the sense of legal security, even in the most patriotic and virtuous breast, remains unimpaired by the recent proceedings.

One important result has been gained. During a trial of eight days before the Supreme Court of the Colony, in circumstances the most favourable for eliciting evidence, on the presumption that any exist, naught transpired to show that there had been, prior to the outbreak in December, 1850, the slightest collusion between the Hottentots and the Kafirs, or that the rebellion on the part of the Hottentots, unnatural and wicked though it be in itself, and wholly to be condemned, had been by them preconcerted. On the contrary, evidence,—indirect but most satisfactory,—was obtained, without its being sought for by the friends of the Kat River Settlement—which, indeed, justice to the prisoner on trial for his alleged part in the rebellion forbade—that there had been no predisposition to revolt, and, consequently, no organisation, until Hermanus Matroos † had unfurled his standard, and compelled a number of the Hottentots in his immediate vicinity, to commit themselves to his own mad and ruinous project. It is confidently believed that a future Commission of Inquiry will strengthen this conclusion. Thus "the patient investigation of indubitable fact" has shown a result altogether unanticipated by the editor of the *Graham's Town Journal* and his friends. Their vaunted "triumph" is equivalent to a defeat. Another such, obtained in like manner, would prove utter ruin to the pretence which, when to serve a purpose, is put forth by this party, of free and equal rights being enjoyed by all classes in this country. If the spirit of a community be adverse to the rights of any section of its people, what avails the legal statute in their favour?

It is deeply to be regretted that men should be found who act to so great a degree from sudden impulse, and that a movement, now seen to have been extemporaneous, should have been persisted in with a doggedness worthy of a better cause. But our public authorities, it may be presumed, are not unacquainted with the distinguishing characteristics of the Hottentot race, and with these authorities, in some degree, the public will think, rests the blame of the fearful consequences of disregarding those characteristics: not only in being studiously oblivious of the past services of these people, but also in the neglect of them during a time of unwonted danger, and in pursuing measures towards them calculated to irritate their feelings and alienate them from the Government. The public have yet to be informed why so great a number of the Hottentots, four hundred men, were disarmed by the late magistrate, some months before the war; and why, knowing the defenceless state of the Kat River Settlement, prompt steps were not taken to assist the loyalists in checking disaffection on its first appearance! Can the public authorities plead ignorance of the origin and progress of disloyalty and revolt? Were the doings at Fort Armstrong and at Philipton likely to strengthen the hands of the loyal subjects of Her Majesty, or of the rebels? A future chronicler may disclose painful truths with reference to the management of this frontier war and rebellion; in the meantime, it may be held sufficient by a few unprincipled white men on the frontier to offer to public vengeance,

* An able, and withal faithful, analysis of the Evidence is given by the prisoner's counsel, E. B. Watermeyer, Esq., p. 173.

† A *Kafir* located at Blinkwater by the Government in return for past services against his countrymen. The evils which were likely to arise out of this Kafir community in the midst of the Hottentots, were foreseen by Sir Andries Stockenstrom, who strongly remonstrated against it; but in vain. (Rev. J. Read's Letters on the Kat River Settlement, p. 14.)

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under the forms of law, inferior victims, and among them Field-cornet Andries Botha.

A word or two may be permitted on this extraordinary trial. On the morning of the 12th May, the case was opened with the usual formalities before His Honour Sir John Wylde, Knt., H.M. Chief-Justice for the colony. The Hon. W. Porter, Esq., H.M. Attorney-General, appeared on behalf of the Crown; and E. B. Watermeyer and J. H. Brand, Esqrs., as counsel for the prisoner. C. A. Fairbridge, Esq., of the firm of Messrs. Fairbridge, Hull & Meintjes, acted as the prisoner's attorney. The court and spectators, during an argument on a point of law, were reminded by the public prosecutor of the improved spirit of our own age to that of Queen Anne, when a certain statute was passed, which it was now sought to apply to the benefit of the prisoner. "This statute," said he, "was framed at a time which, thank God, exists no longer,—when the memory of Jeffreys and Saunders, and others like them, was still fresh in the mind of the country,—when attorneys-general were like wild beasts, seeking for blood."* Whether the illustration should be in contrast or in analogy, we shall not stop now to inquire: it affords real pleasure to be able to except the Hon'ble Mr. Porter from his own emphatic, but alas! too truthful description of the public prosecutors, and of the sworn administrators of justice, in a bygone age. In the late trial he simply did his duty: men may differ in opinion on some parts of the late proceedings, without impeaching his rectitude.

Thanks to an over-ruling Providence, the times *have* changed. We do not expect the scenes of the 17th century to be re-acted in the 19th. The spirit of the age imposes a restraint upon men's principles and passions. The occasions are not few when the subjects of Her Majesty rejoice in that great bulwark of constitutional rights, the freedom of the Press. Even in our own day men may be found to act the tyrant, to play the fool, and, with the constant profession with the lip of the solemn obligation of an oath, to prostitute even the seat of judicature to the ends of political partisanship. But the Press is free, and the winds of heaven will bear its record of misdeeds to the farthest limits of the human family, and onward to the end of time. Few men are hardy enough to insult the good sense of their compeers, or to defy posterity. It is truth alone that makes men uniformly bold!

Those of our fellow-colonists who have suffered from the Kafir war and the Hottentot rebellion have, at least, our heartfelt sympathy. Who, indeed, could withhold it from men whose ruined homesteads, with their scattered flocks and their broken family circles, are in such painful contrast to what their circumstances were before those tremendous evils broke in upon them? It may be feared, that in the minds of some of the sufferers, the sense of injury is too strong, and the events from which it has arisen, are too recent, to admit of a calm review of the past. But we may assure them that they mistake the principles and misjudge the actions of the Missionaries of the Kat River Settlement, when they regard them as the apologists for crime, or as being indifferent to the general welfare. A future age will do them justice. Even now a re-action of feeling in favour of these much maligned men has commenced. Heaven diffuse it throughout the land, and maintain it fresh and vigorous for ever! The cause of Christian Missions involves the true freedom, the highest development and consolidation of the interests of all classes in the Colony, and their most perfect happiness. In the promotion of these, the London Missionary Society is not a whit behind the most honoured of kindred associations. It challenges a full and impartial enquiry.

W. T.

Mission House, Cape Town, 8th June, 1852.

* p. 80.

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CAPE OF GOOD HOPE.

TRIAL OF ANDRIES BOTHA:

&c. &c. &c.

THIS case had stood over for some days in consequence of a fresh indictment having been served upon the prisoner.

Messrs. Watermeyer and Brand, jun., appeared for the defence.

The following persons were empannelled as a jury :— F. Pocock, A. A. Bruins, H. Nelson, J. J. Jurgens, R. Langley, William Gilman, H. Peck, P. J. Botha, and J. C. de Villiers.

Four jurors, whose names were called, were fined for non-attendance, viz.,—Messrs. Zeederberg, Oliviera, Wagner, and Coffin; two, Messrs. Gie and Holt, were challenged by the prisoner's counsel; and the remainder were allowed to depart to their homes, being warned that if they left their homes they must leave word where they might be found, on notice from the court.

The prisoner was then formally arraigned, and the following Indictment was read to him in English and Dutch :—

"That ANDRIES BOTHA, now or lately an Agriculturist, and now or lately residing at Philipton, in the district of Stockenstrom, is guilty of the crime of *High Treason*;— 1st, in that, the said Andries Botha, being a subject of our Lady the Queen, not regarding the duty of his allegiance, but, on the contrary, wholly withdrawing the fidelity and obedience due, of right, by every subject of our said Lady the Queen to our said Lady, upon or about the twenty-fourth day of January, in the year of Our Lord one thousand eight hundred and fifty-one, and at Fort Armstrong, in the district aforesaid, with force and arms, together with divers other false traitors, armed and collected in a warlike manner, that is to say, with guns, being then and there wrongfully, unlawfully, maliciously, and traitorously assembled and gathered together, most wickedly, maliciously, and traitorously did levy and make war and rebellion against our said Lady the Queen, within this her settlement, and did, then and there, maliciously and traitorously attempt and endeavour, by force and arms, to subvert and destroy the government of our said Lady the Queen within this settlement, as by law established, and did, then and there, in furtherance of

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the said war and rebellion so levied, with force and arms, assault and illtreat divers loyal subjects of our said Lady, then in her service and employment, to wit, one Biyosi, one Klaas Mafee, one Nani, one Tabeni, and one Jiana, all now or lately labourers, whose residence is to the Prosecutor unknown, and did, with force and arms, take from the said last-mentioned persons respectively divers guns and horses, the property of our said Lady the Queen, and did counsel, advise, and instigate the other traitors who were then and there assembled to put the said Biyosi, Klaas Mafee, Nani, Tabeni, and Jiana, to death; and other traitorous acts, in furtherance of the said war and rebellion so traitorously levied, the said Andries Botha did do and commit.

"2ndly.—As also, in that the said Andries Botha, being such a subject as aforesaid, not regarding the duty of his allegiance, but, on the contrary, wholly withdrawing the fidelity and obedience due, of right, by every subject of our Lady the Queen to our said Lady, upon or about the twenty-fifth day of January aforesaid, in the year aforesaid, and at Fort Armstrong aforesaid, with force and arms, together with divers other false traitors, armed and collected in a warlike manner, that is to say, with guns, being then and there wrongfully, unlawfully, maliciously, and traitorously assembled and gathered together, most wickedly, maliciously, and traitorously did levy and make war and rebellion against our said Lady the Queen within this her settlement, and did, then and there maliciously and traitorously attempt and endeavour, by force and arms, to subvert and destroy the government of our said Lady the Queen within this settlement, as by law established, and did then and there, in furtherance of the said war and rebellion so levied, assault and ill-treat divers loyal subjects of our said Lady, to wit, one Mango, one Boko, and one Pempini, all now or lately in the service of our said Lady, as members of a certain military force, commonly called the Alice Fingo Levy, and did, with force and arms, take from the said last-mentioned persons respectively divers horses, guns, arms, and accoutrements, and did counsel, advise, and instigate the other traitors who were then and there assembled to put the said Mango, Boko, and Pempini, to death; and other traitorous acts, in furtherance of the said war and rebellion so traitorously levied, the said Andries Botha did do and commit.

"3rdly.—As also, in that the said Andries Botha, being such a subject as aforesaid, not regarding the duty of his allegiance, but, on the contrary, wholly withdrawing the fidelity and obedience due, of right, by every subject of our Lady the Queen to our said Lady, upon or about the seventh day of February, in the year aforesaid, and at some place in the district aforesaid, situate close to

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Lushington, which place the prosecutor is unable more particularly to describe, with force and arms, together with divers other false traitors, armed and collected in a warlike manner, that is to say, with guns, being then and there wrongfully, unlawfully, maliciously, and traitorously assembled and gathered together, most wickedly, maliciously, and traitorously did levy and make war and rebellion against our said Lady the Queen, within this her settlement, and did, then and there, maliciously and traitorously attempt and endeavour, by force and arms, to subvert and destroy the government of our said Lady the Queen within this settlement, as by law established, and did, then and there, in furtherance of the said war and rebellion so levied, take counsel with, advise, incite, and command certain other false traitors then and there being, to wit, one Willem Uithaalder, now or lately a labourer, whose place of residence is to the prosecutor unknown, and one Macomo, a Kafir, whose occupation and place of residence are to the prosecutor unknown, touching and concerning the manner in which the said war and rebellion, so levied as aforesaid, might be most effectually prosecuted; and other traitorous acts, in furtherance of the said war and rebellion so traitorously levied, the said Andries Botha did do and commit.

"4thly.—As also, in that the said Andries Botha, being such a subject as aforesaid, not regarding the duty of his allegiance, but, on the contrary, wholly withdrawing the fidelity and obedience due, of right, by every subject of our Lady the Queen to our said Lady, upon or about the twenty-second day of February aforesaid, and at Balfour, in the district aforesaid, with force and arms, together with divers other false traitors, armed and collected in a warlike manner, that is to say, with guns, being then and there wrongfully, unlawfully, maliciously, and traitorously assembled and gathered together, most wickedly, maliciously, and traitorously did levy and make war and rebellion against our said Lady the Queen, within this her settlement, and did, then and there, maliciously and traitorously attempt and endeavour, by force and arms, to subvert and destroy the government of our said Lady the Queen within this settlement, as by law established, and did, then and there, in furtherance of the said war and rebellion so levied, repeatedly discharge a gun loaded with gunpowder and leaden ball at and against Her Majesty's troops, and at and against a certain burgher or other irregular force of Her Majesty then and there engaged in assisting and maintaining Her Majesty's lawful authority, and did embody, procure, and command divers other false traitors to assault, shoot at, and utterly destroy the said troops and the said force; and other traitorous acts, in furtherance of the said war

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and rebellion so traitorously levied, the said Andries Botha did do and commit.

"5thly.—As also, in that the said Andries Botha, being such a subject as aforesaid, not regarding the duty of his allegiance, but, on the contrary, wholly withdrawing the fidelity and obedience due, of right, by every subject of our Lady the Queen to our said Lady, upon or about the twenty-third day of February, in the year aforesaid, and at Van Beulen's Hoek, in the district aforesaid, with force and arms, together with divers other false traitors, armed and arrayed in a warlike manner, that is to say, with guns, being then and there wrongfully, unlawfully, maliciously, and traitorously assembled and gathered together, most wickedly, maliciously, and traitorously did levy and make war and rebellion against our said Lady the Queen, within this her settlement, and did, then and there, maliciously and traitorously attempt and endeavour, by force and arms, to subvert and destroy, the government of our said Lady the Queen within this settlement, as by law established, and did, then and there, in furtherance of the said war and rebellion so levied, aid, comfort, and assist certain other traitors then and there armed and arrayed against our said Lady the Queen, and did supply one of the said traitors, to wit, one Christoffel Botha, whose occupation and place of residence are to the prosecutor unknown, with a horse, a saddle, and a bridle, to be used by him in prosecuting the said wicked war; and other traitorous acts, in furtherance of the said war and rebellion so traitorously levied, the said Andries Botha did do and commit.

"6thly.—As also, in that the said Andries Botha, being such a subject as aforesaid, not regarding the duty of his allegiance, but, on the contrary, wholly withdrawing the fidelity and obedience due, of right, by every subject of our Lady the Queen to our said Lady, upon or about the twenty-sixth day of February, in the year aforesaid, and at some place in the district aforesaid, situate close to Lushington, which place the prosecutor is unable more particularly to describe, with force and arms, together with divers other false traitors, armed and collected in a warlike manner, that is to say, with guns, being then and there wrongfully, unlawfully, maliciously, and traitorously assembled and gathered together, most wickedly, maliciously, and traitorously did levy and make war and rebellion against our said Lady the Queen, within this her settlement, and did, then and there, maliciously and traitorously attempt and endeavour, by force and arms, to subvert and destroy the government of our said Lady the Queen within this her settlement, as by law established, and did, then and there, in furtherance of the said war and rebellion so levied, repeatedly discharge a gun loaded with gunpowder and leaden ball at

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and against Her Majesty's troops, and at and against a certain burgher or other irregular force of Her Majesty, then and there engaged in assisting and maintaining Her Majesty's lawful authority, and did embody, procure, and command divers other false traitors to assault, shoot at, and utterly destroy the said troops and the said force; and other traitorous acts, in furtherance of the said war and rebellion so traitorously levied, the said Andries Botha did do and commit."

The prisoner pleaded not guilty.

The Attorney-General, in opening the case, said :—

Gentlemen of the jury,—You have heard from the Registrar of the Court that the prisoner at the bar is charged with the crime of High Treason. Gentlemen, the practice of this court, differing in this respect from the practice of courts in the mother-country, makes my duty at present a very simple one. The 101st rule of this court provides that the counsel on the part of the prosecution—which I am—may, before calling his witnesses, if he shall think fit, briefly state to the jury the facts and circumstances he means to prove, without comment thereon, and shall then proceed to call and examine his witnesses; and in like manner, the counsel on the part of the prisoner may, if he mean to call any witnesses, and if he think fit, briefly state to the jury the facts and circumstances which he means to prove, without comment thereon,—and shall then proceed to call and examine his witnesses. After the evidence is closed, it shall be competent to the counsel for the prosecution to observe upon the evidence, and after him, in like manner, the counsel for the prisoner, and the judge shall then sum up the evidence for the jury. Therefore, gentlemen, my duty at present is to tell you, in as few words as possible, the facts which I propose to prove for the purpose of satisfying you that the prisoner is guilty of the crime charged against him. I shall prove, if it be necessary, that on the day before Christmas, 1850, in the Keiskamma Poorts, in Kafirland, hostilities broke out between the Kafir tribes and Her Majesty the Queen. It was on that day that the patrol under Col. Mackinnon was fired upon, which was the commencement of what we call the Kafir war. It will be proved that when intelligence of this event reached Fort Beaufort, a number of the inhabitants there evinced hostility to British rule, and a tendency to join the enemy in Kafirland. I shall prove that the prisoner at the bar was field-cornet of Buxton, as it is sometimes called, but which we shall rather call the Upper Blinkwater. It will appear that a man, sometimes called Hermanus Kafir, and sometimes Hermanus Matroos, with a combined force, partly composed of Kafirs, Ghonas, and others, his own people, and partly of Hottentots, who had joined him for the purpose, made an attack on Fort Beaufort, for the purpose of taking and sacking that town, on the 7th of January, 1851. It will appear that one of the most conspicuous rebels in the Kat River settlement, a man named Uithaalder, established a camp not far from Fort Armstrong, sometimes called the Krantz in the language of these people, and that this man came down with a considerable force to

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menace Fort Armstrong, where Mr. Wienand and others were, on another date, which you will do well to remember,—the 22nd of January,—fourteen days after the attack on Fort Beaufort. I shall prove to you by the evidence of several persons, that the prisoner at the bar, as field-cornet of Blinkwater, was summoned to come in to assist the magistrate, or to assist the field-cornet in his duties there, and that he was in Fort Armstrong on the day when Uithaalder's commando arrived; and I shall prove by a person who rode out with him that he left the fort with two other parties, young Bantam and old Bantam, that he met the rebels a few miles off, advancing to the attack of Fort Armstrong; that he went aside with Uithaalder, the leader, and had a long conference with him; that he then mounted and rode back to Fort Armstrong with the intelligence that the commando under Uithaalder was coming on, which created great confusion in the camp. I shall prove that it was the determination of the Englishmen there and a certain number of Hottentots, if they were allowed by the parties who took authority over them, to fire on the rebels and bring the matter to a crisis; and I will prove by the evidence of a most important witness to be produced for the purpose of the defence, the Rev. James Read, jun., that it would have been in all human probability a successful attack if they had then attacked the rebels. But not only did Botha give orders to the people under him not to fire and persuade others to follow the same course, but he made use of exceedingly disloyal expressions with regard to the British authority in general, and the policy which the Hottentot generation, or *geslacht*, or nation, ought to observe on the occasion. I shall prove that Mr. Wienand, the Resident Magistrate, with the English who have taken refuge in Fort Armstrong, having left that place on the evening of the 23rd January,—a party of Fingoes was dispatched by Col. Sutton, from Fort Beaufort, a distance of 27 miles, to proceed to Fort Armstrong, and communicate with the loyalists supposed to be there. I shall prove that they came there on the 24th, and were immediately plundered of their horses and guns, and that Andries Botha on that occasion used the most improper language, both as to the authority of the Queen and his determination, if he had not been prevented, to put these men to death. I shall prove that on the next day three other Fingoes, who had also been sent on a similar mission, arrived and were treated in the same manner, and, as they swear, by the orders, or at least with the approbation, of the prisoner at the bar. This is the matter which forms the second count in the indictment. The third count refers to another place, distant 14 miles, near Lushington, where there was a rebel camp under Uithaalder, and Kafirs under the command of Macomo. A witness will be produced who was himself one of the rebel force on that occasion, who is prepared to prove that at that camp, on a day about the 7th February, Botha came there, dined with Macomo and Uithalder, and had some conversation, which this man holding the horse at the door heard, concerning the war and the way in which it might be most advantageously prosecuted. The fourth count refers to a most important matter, which my learned friends feel, with myself, to be the cardinal point of this case. It relates to what occurred on the 22nd of February, the

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day on which Gen. Somerset attacked, stormed, and took possession of Fort Armstrong. General Somerset moved up the Kat River to make the attack, and had made arrangements with a number of farmers to support him, by coming down in another direction.

[Chief Justice.]—Had not you better let the jury see the map?

[A map was handed in to the jury, and the Attorney-General proceeded.] I believe, from information I had from Mr. Wienand and others, that this map is not to be depended on for exact distances, but for all practical purposes there will be no dispute whatever as to its accuracy. Looking at that map you will see certain red spots towards the bottom which represent Fort Beaufort. Moving up higher towards the north you find Lower Blinkwater, where a man named Jacobs was the field-cornet. Then towards the Upper Blinkwater appears the place of Hermanus. You also see Upper Blinkwater, a field-cornetcy which embraces a good deal of space, Andries Botha being field-cornet. Then, to the east, on the Kat River, you see Fort Armstrong placed. A little to the north of that is Hertzog, and further to the right Philipton, Eland's post, the Mancanzana, and then away on the right come Woburn and the other late military villages. I was mentioning to you that on the 22nd of Feb., exactly one month after Uithaalder's commando had appeared at Fort Armstrong, Macomo, with a military force, appeared at Fort Armstrong. But a commando of boers came in an opposite direction. At break of day on the 22nd, the burgher force, with the Pringles, appeared in the neighbourhood of Balfour, when they were met by the rebel force of Hottentots, and there was sharp firing between them until 10 o'clock in the morning,—the object of the rebels being to stop this commando from joining the military force advancing under Gen. Somerset. I shall prove that Botha was seen, before the firing commenced, to leave Philipton, armed and mounted, with a number of his people, and move in the direction of Balfour, the rebel forces lying in such a position that it was not possible for him to join the farmers without going through them; and four witnesses swear that he was seen repeatedly dismounting and firing his gun on that occasion. The fifth count depends on the evidence of another witness, who himself fought under Uithaalder against Her Majesty's forces at Balfour, and who, after the rebels were dispersed, had fallen back with them to Van Beulen's Hoek, which is up to the left of the map. It will appear that the rebels there reassembled, that Uithaalder was there, and Andries Botha came there with a *geele paard*, a yellow horse, which he ordered to be saddled up for, and gave to, his son Stoffel Botha, who had been wounded in the attack on Fort Armstrong, who went away with that horse, and who is still in the mountains fighting against the Queen. This communication with rebels on the day after the affair at Balfour is what is charged in the fifth count. Gentlemen, the last count charges an attack by the prisoner upon Her Majesty's troops, or on the irregular force at Lushington, on the 26th of February, about three days after the affair at Balfour. The 22nd of February, it will be proved was a Saturday. On the 23rd, Gen. Somerset remained still at Fort Armstrong. On the 24th, he moved his

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force, on the 25th, was at Philipton, and on the 26th, was at Lushington, where, in consequence of rebels being seen on the hills, a patrol was sent out chiefly composed of Fingoes; and it will be proved that there was fighting. General Somerset then moved down with a number of prisoners to Fort Alice, anciently called Blok Drift, which is marked on the map to the right hand corner. I shall prove that, on the 7th of February, before General Somerset moved up to Fort Beaufort, he had issued a general order, which was brought to the notice of Botha and others, directing that all loyal men should repair to and remain in certain places which he mentioned,—Balfour, Philipton, and another. I shall prove that, on the 25th of February, when Gen. Somerset reached Philipton, although all the loyal field-cornets and people were there, and met the General and explained their conduct, or were taken prisoners that they might explain it afterwards,—Botha was not there; and that on the 26th, 27th, 28th, 29th, and the 1st of March, still Andries Botha was not at Philipton. As I compute it, from seven to ten days elapsed between the visit of Gen. Somerset to Philipton, where Botha ought to have been, and the day on which Botha came into Elands' Post, where Mr. Wienand, the magistrate, then was, and gave himself up. He was immediately then placed in custody, on the representation of Mr. Wienand, by the military authorities, and brought to Fort Hare; and I shall prove that, when along with the other prisoners awaiting their trial at Fort Beaufort,—fifty of whom have been convicted, and are now at Bain's Kloof,—he referred to circumstances which occurred both at the fight at Balfour, on the 22nd of February, and at the one near Lushington, on the 26th, and spoke of himself as present on these occasions, and of the destruction which would have attended the military force on the first occasion, and the Fingoes on the second, but for circumstances which he stated. Some other facts will probably be brought out in the course of the examination; but at present it seems not proper for me to enter with greater detail into the evidence which will be produced. The evidence on the part of the Crown will now be laid before you; and you will, I am sure, pay that attention to it which the importance of the case demands.

It was ordered that all witnesses should leave the court, with the exception of the Rev. Mr. Read and Mr. Wienand.

Mr. Cyrus was sworn as Kafir interpreter.

Nani, a Fingo, was then called and sworn.

[By the Attorney-General.]—Where did you live before the war?—At Philipton.

You know Mr. Wienand, the Fort Armstrong magistrate?—Yes.

Do you remember when Mr. Wienand left Fort Armstrong to go to Philipton?—I do not.

Were you ever sent on any message by Mr. Wienand?—Mr. Wienand sent me on a message to Fort Hare.

Who went with you?—Klaas Mafee, his brother Swaartbooi Mafee, Jiana, Biyosi, Jan; I made the seventh.

Do you know the name of Tabeni?—No.

Did all of these go together or at different times?—At different times; four of us started in the evening, and two came afterwards about mid-day, and afterwards Jeremiah came.

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[By the Chief Justice.]—How do you know that they came from Fort Armstrong?—Because I left them there.

[Attorney-General.]—Well, what occurred at Fort Hare?—Gen. Somerset said he could give no assistance, for there was a party of Kafirs coming from the direction of Burn's Hill. Then we went to Fort Beaufort, and gave Colonel Sutton a letter from Somerset. Col. Sutton said he could render us no assistance, as he had only Fingoes. We were then directed to take the horses to the stable, and he would see us by-and-by. Rations were given to us, and we were told to go to the other Fingoes, and we did so. After night time, a Cape Corps man came to us, and said, "Where are those people who came about sun-down?" We went to him, and he said that Col. Sutton had sent for us. We went with him, and Col. Sutton told us to go immediately to Fort Armstrong, and to leave the horses that we had brought with us, and he would give us fresh Cape Corps horses. Then we all seven went to Fort Armstrong in the night time, in the rain. We got there in the morning, when the cattle leave the kraal for grazing. The sun was up. When we got near to Fort Armstrong, four of us went in, and three stopped outside; Jiana, Swaartbooy Mafee, Biyosi, and myself, went in. We found the street of Fort Armstrong filled with Hottentots. They laid hold of the bridles of the horses we were riding, and wished to know where were the horses we had taken away from there. We said we had left them at Fort Beaufort. They wanted to know the reason why. We said that Colonel Sutton had given us fresh horses, and told us to return and see if the English inhabitants were still there.

[Chief Justice.]—What more took place?—They then asked where the letter was which we had brought?

Can you tell us any one who asked you?—Botha was the man who asked for the letter.

[Attorney-General.]—Do you see him here?—(The witness identified Botha.)

Had you known Botha before?—Yes, well.

[Chief Justice.]—How had you known him?—I knew him as the captain.

Of what?—Of the Umzibienzi River.

[Attorney-General.]—He means field-captain of the Upper Blinkwater.

[Chief Justice.]—Had you lived at Blinkwater before?—No, I had not.

Had you lived in the Kat River Settlement?—Yes, that was where I lived.

[Attorney-General.]—Well, they asked for the letters,—what then?—We said we had no letter, and we were then plundered. My horse, saddle, and bridle, and my gun and pouch, were taken from me.

[Chief Justice.]—These were the arms that had been served out to you, I suppose?—Yes.

As one of the Fingo Levy I suppose?—Yes.

[Attorney-General.]—Now, do you know the name of the man, or do you know the man who took away your gun?—No.

Or your horse?—I do not know his name. He was a tall Bastard who took away the horse.

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[Chief Justice.]—Do you know any man who took any particular thing you were plundered of?—No.

Can you tell me any one who gave any order, or were these things taken from you without any order, of their own accord?—Botha was the person who gave the order. He said take these Fingoes to the Krantz and shoot them.

How far did he stand from you then?—As far as from here to the fire (about 10 yards).

Is that all he said, or was anything else said?—He said "these Fingoes, these are the persons who destroy my friends at Fort Beaufort and Fort Hare."

Nothing more?—That is all.

You say some order was given; do you recollect the words?—He said "Hottentots, why do you speak so much to the Fingoes; take them, drive them out to that Krantz." That was the only order I heard.

[Attorney-General.]—Was that said before or after the horse and gun were taken from you?—After.

Did you see Botha when the horse and gun were taken from you?—He was standing as far from me as the green door (about 12 yards.)

What then took place?—A Hottentot came forward and said, "What is this you are doing? These people are ignorant, they do not know anything about letters; are you not glad that the English send men to you?" That Hottentot took us out of the crowd.

[Chief Justice.]—Do you know who he was?—No; but Klaas Mafee knows the name of the Hottentot.

What became of the horses?—I do not know; they were taken away from us, and all the things.

What took place then?—We then crossed the river by ourselves, and went to Mr. Read's, and on this side of Willem Pretorius's place we met Mr. Read, and bade him good day, and passed him, and went on to Philipton. I did not leave Philipton after that.

Did you see anything of Botha after that?—I saw him at Philipton after that day.

How soon afterwards?—It was not a week, but I do not know how many days.

Did anything take place between you and him?—No.

[Cross-examined by Mr. Watermeyer.]—When you came there the magistrate, Mr. Wienand, was there?—I heard that he was there.

Why did you not go and report to the magistrate that you had been plundered by Botha?—I heard that the magistrate was kept in concealment, but Klaas Mafee went to him.

[Chief-Justice.]—I cannot take that; it is not evidence. I cannot take what Klaas Mafee told him.

[Mr. Watermeyer.]—I think, on consideration your lordship will agree with me, that it is a proper question to ask. This man now accuses the prisoner of being the chief of the plunderers when he and others were robbed of certain horses at Fort Armstrong. I put the question—if this occurred, and you came to where a magistrate was, why did you not report it to the magistrate? He answered, because I heard, the magistrate was in concealment; but Klaas Mafee went. Now, I will prove that no one reported the matter to Mr. Wienand;

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and I want this man's reason for not doing in 1851 what he now does in May, 1852.

[Chief Justice to the witness.]—Did you think of going to the magistrate, or did you not think of going to the magistrate?—No, I did not think of going to the magistrate, because I heard that he was kept in concealment. Mafee told me that he had been to the magistrate, and seen him.

[Chief Justice.]—This still appears to me to be no evidence. I have taken it, but I make a note that it was objected to by the court as not being evidence.

[Mr. Watermeyer.]—Now, the horses you had ridden to Fort Hare were horses belonging to the people of the Kat River settlement?—Yes.

Of people living at Fort Armstrong?—Yes.

[Chief Justice.]—Do you mean that they had lent them to you or hired them?—They were given to us by the magistrate, Mr. Wienand.

Did not the people who seized the bridles of your horses say that they came to take those horses instead of their own horses?—Hermanus Lotz said so; he was the only person who said so. He seized the horse of Jiana. He was the assistant field-cornet at Fort Armstrong before the war. I do not know what he was then.

Well, he said he took this horse instead of one of his which had been taken away?—Yes.

And he took the saddle and bridle?—Yes.

[Mr. Watermeyer.]—Botha did not touch the horse or the gun?—No.

Can you speak Dutch?—I can understand, but I can't speak much.

What language did Botha speak when as you said he gave orders?—He spoke in Dutch. He said, "Waarom praat ge zoo met de Fingoes. Vat de Fingoes, en schiet em dood by de Krantz."

Can you tell me why you did not, for a whole year, report what had occurred?—I heard that the magistrate was kept in concealment. The first time I saw him was when he was going away to Fort Beaufort, and he was then surrounded by Hottentots.

Where did you go from Philipton?—I went with Somerset, and entered the service. I had not been in the service before, except as a messenger.

Why did you not tell Gen. Somerset, or one of the officers?—Mr. Haw (clerk of the Peace for Victoria) sent for me, and asked me where were those persons who were plundered; I told him the circumstances, how our horses were taken from us, and he took down what I said in writing. Nobody was present when he did so.

Was this before or after the court-martial?—What court-martial?

The court-martial at Fort Hare where Hermanus Lotz and these people were tried?—It was before that.

Were you aware that Botha was imprisoned at Fort Hare at the time of these courts-martial?—Yes.

And that he was afterwards released?—Yes.

The Attorney-General observed that Botha had been discharged before the trials were over by the military authorities, and somehow or other, he did not know how, he was not tried.

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[Mr. Watermeyer.]—Was the Hottentot who assisted you out of the crowd Jan Fourie?—No.

What is your religion? are you a christian?—I am not a christian.

Do you know anything of a future state?

[Chief Justice.]—I do not know that you can put that question. I do know what you or I know of a future state. You may ask,—do you believe in a future state?

[Mr. Watermeyer.]—Well,—do you believe in a future state?—I believe there is no future existence.

[Chief Justice.]—Why, then, did you take the oath?—I know there is a God.

Do you believe that he will punish you if you do not speak the truth?—I know that God will punish me if I do not speak truth.

How can he punish you if there is no future state?—He can punish me. There is a future state to those who believe in God, and pray to God.

[Mr. Watermeyer.]—You know that you Fingoes sometimes swear with as much solemnity by Mr. Cyrus, the interpreter, as you do by God?—Yes, but through that we mean to swear by God.

My object, my Lord, is not to exclude this man's evidence, if it is worth anything; but I object to the mockery of going through the solemnity of an oath, when there is a provision for dispensing with it under such circumstances in the 6th section of Ordinance 14. He says he believes there is a future state for those that pray, but he does not believe that there is a future state for him.

[Chief Justice.]—At the time these men were sworn before the grand jury, they were separately questioned as to their ideas of the solemn obligation of an oath, and having been found competent to take the oath then, he was regarded as equally competent now.

[Mr. Watermeyer.]—I do not object to your Lordship's proceeding to take the statement of the witness, but I object to his statement being received as evidence given under oath. [To the witness.] Can you tell me the name of any one of the persons who took your horse and the other six horses?—I do not know who took my horse. Jan Fourie took Biyosi's horse, saddle, bridle, and gun, from a Hottentot who had taken it from Biyosi.

[Chief Justice.]—You are quite sure that you saw Andries Botha there, and you know him well?—I am quite sure.

Did he move about or stand still when the seven horses were taken from you?—He stood still.

Are you sure?—Yes.

Then he was near enough to see all that was going on?—Yes, I saw him standing there.

Was there anything said about shooting before that?—After the horses were taken away from us, then the words about shooting came.

Did the horses remain in the hands of the parties who took them from you?—They were taken away immediately.

Are you quite sure that nobody interfered to prevent the Hottentots from plundering you?—I saw nobody.

And you would have seen if there had been anybody?—I would have seen them.

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Then you are quite sure that Andries Botha did not prevent them from taking away the horses?—I did not hear it; I only heard the words I told you.

And you did not see him do so?—I did not.

When he said, as you have told us, they were to take you to the Krantz and shoot you, were you on the spot where the horses were taken from you?—One stood here and another there in the crowd, and so we were separated from one another.

Were you afterwards moved away or pushed towards the Krantz?—It was while we were being brought together that the Hottentot made use of the words "don't do that."

For what purpose did you presume at the time that you were being collected?—To be driven to the Krantz where we heard we were to be shot.

What clothes had Botha on that day?—He had on a great coat with red lining inside.

What kind of a coat was it?—The same kind of coats the Dutchmen wear, of a dark colour.

He did not at all prevent the Hottentot from taking you away from the crowd?—I did not hear him. When we were being collected together I left Botha still standing on the same spot.

[Mr. Watermeyer.]—Did Commandant Groepe, or the Rev. Mr. Thomson, or the Rev. Mr. Read, sen., interfere to prevent them?—I did not see them.

[Chief Justice.]—Do you recollect that the Rev. Mr. Thomson was there?—I did not see him.

Did you see Commandant Groepe?—No, I did not; the only person I saw was Mr. Read.

Do you mean that at the time you were plundered of the horses you saw Mr. Read?—No, it was afterwards, when Jeremiah gave the letter to Mr. Read.

The Attorney-General observed that the Kafir name for Mr. Read was different from that which the witness had previously used.

Mr. Cyrus said, the one was a translation of the word "reed," "*goongola*," which was applied only to Mr. Read, sen., while Mr. Read, jun., was called by his name, James.

[Chief Justice.]—Was Mr. Read there at the time the horses were taken away?—I did not see Mr. Read till after we were plundered.

Then he could not interfere to prevent it?—I did not see him.

[Attorney-General.]—Was he not with Botha?—No.

[Chief Justice.]—Where were you when Jeremiah gave Mr. Read the letter?—We were still in the crowd.

Did he read it in the crowd?—He went away with it to the house.

This was a letter from Col. Sutton?—Yes.

KLAAS MAFEE called.

The Chief Justice asked how this witness would be examined, —by oath or without an oath.

Witness said, whichever way the judge pleased.

[Chief Justice.]—Do you believe in a God above?—Yes.

Do you believe in a future state of being in which all men will be equally punished for their crimes?—Yes.

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The Chief Justice observed that he did not think it requisite to cross examine this man with regard to his creed. Having given these answers, and already been examined on oath by the grand jury, he must be treated as any other witness.

[By the Attorney-General.]—You are a Fingo?—Yes, and my father is also a Fingo.

You know Mr. Wienand?—Yes, he is my chief.

You remember his sending you and other Fingoes on a message to Gen. Somerset to Fort Hare?—Yes.

[Chief Justice.]—How many were there?—Seven.

[Attorney-General.]—Do you remember the morning you got to Fort Armstrong?—Yes.

Tell me what occurred there?—When we got near, four men were sent in to the place, and three including myself followed afterwards. I was the head of the party; I was appointed the sergeant. When myself and the two men went in to Fort Armstrong, immediately I got into the street I was collared by a man of the name of Rexere,* a tall brown man. I would know him again. I used to live with him at Mr. Read's. He asked me for the letter. I said we had no letter written. The street was full of Hottentots.

[Chief Justice.]—Were there as many people as now in this court?—I cannot judge because the people in this court are crowded, and they were scattered.

Were there others besides Hottentots?—They were Hottentots only.

What then occurred?—When I told Rexere * that Col. Sutton had not given us any letter as the roads were blocked up, another Hottentot came up to me and made inquiries about a saddle. He was a servant of Mr. Macmaster's. He said the saddle belongs to Mr. Macmaster. I said "The saddle does not belong to you; I borrowed the saddle of the master; speak what you have to speak." He then seized the horse and took it away.

Were you riding the horse?—I had dismounted.

Why did you let him take it?—Two English women, who were there, advised me to let the horse go, and let them take it away.

[Attorney-General.]—Was there a noise?—Yes.

Who was making a noise?—The Hottentots.

[Chief Justice.]—Do you mean there were uproars, riots, or what?—They were all talking together.

By together, you mean all at one time, I suppose?—The Hottentots were talking to me; some said, "To-day you will get plenty of money."

[Attorney-General.]—That is ironical, I presume.

Mr. Cyrus said yes; it implied, "you will be well paid, —you will get much money by this."

[Attorney-General.]—When you were done with Mr. Macmaster's man, what then took place?—I then went on more towards the centre of the street, and I then met Botha.

[Chief Justice.]—Who is Botha?—He was living at the Umzebienzi River (Blinkwater).

Did you know him before?—Yes, he was the field-cornet.

Did you know him as the field-cornet?—Yes, quite well.

Do you see him here?—(The witness identified Botha.)

* So spelt by Mr. Cyrus, but pronounced by him like "*G'wakee.*"

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Well, what took place then?—He asked me for a letter. I said, "Chief, no letter was written for me. Colonel Sutton said there was no road communication." He then said, "I don't listen to a Fingo's word; when I hear a Fingo speak it makes me vomit." He spoke in Dutch something that I don't understand, but I heard him say *shibong*—shoot them.* I did not know what he said, but the other man who was my ear, told me what he said.

[Attorney-General.]—Who was your "ear"?—Swartbooy Mafee. I afterwards went to Mr. Read.

[Chief Justice.]—Then Botha only used the word "shibong" and nothing was done upon it?—I left him there.

Where were your party then?—All scattered about, going one by one.

Did you go to Mr. Read's?—Yes, and bid him the time of day.

[Attorney-General.]—Who carried the letter that Colonel Sutton gave you?—Jeremiah.

What did he do with it?—He took it to Mr. Read.

How do you know?—I asked Mr. Read whether Jeremiah had given him the letter, and he said yes.

In what language did you speak to Mr. Read?—We said nothing particular; Mr. Read only nodded his head.

Did you speak Kafir or Dutch?—(The witness repeated what he said to Mr. Read in a mixture of Dutch and Kafir.)

[Chief Justice.]—Then you can speak a little Dutch?—A little, but it is a very little.

[Cross examined by Mr. Watermeyer.]—When you went away, you met Mr. Read, jun.—Yes.

Was any body with him?—He was alone.

What passed between you?

The Chief Justice objected to the question. Mr. Read, jun., had not been brought on the scene; and what passed between him and the witness on the road could not be evidence against the prisoner.

Mr. Watermeyer said he should certainly not go so much beyond the province of a counsel as to put questions without any object whatever. His intention was to put Mr. Read into the box to contradict him, if he did not say now what he said then.

Chief Justice said, it was quite right to try the witness's veracity; but the man must be informed that it was intended to call Mr. Read into the box for this purpose, and that he must be cautious what he said. In this view the question might be put.

The witness was accordingly cautioned.

[Mr. Watermeyer.]—Did you not tell young Mr. Read that Willem Brass and some young men had been plundering you at Fort Armstrong?—I did not mention the name of Willem Brass. I could not, for I had not seen Brass.

Did you mention his Kafir name?—No, I did not.

* It was the Attorney-General who suggested that this word *shibong* (which is not a Fingo word, and which the witness himself did not know the meaning of) was probably the Dutch "*schiet hem!*" (shoot them!); —a suggestion for which he was indebted, as he stated, to the prisoner's attorney, Mr. Fairbridge.

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When you came to Philipton, did you go and report to the magistrate, Mr. Wienand, that Botha had been at the head of some people who had been plundering you ?—I did not know where he was to be found, for they were all scattered about; they were not where I left them at Fort Armstrong. Jeremiah, while we were still at Fort Hare, came with the information that the people of Fort Armstrong had been scattered.

But you do not understand me. You went from Fort Armstrong to Philipton, after your horses and saddles had been taken away ?—Yes.

You know that Mr. Wienand left Fort Armstrong, and came to Philipton?—After I had been some days at home with my family at Philipton, a messenger came to me and said Mr. Wienand wanted me; I cannot tell what day of the week it was.

Did you tell Mr. Wienand that that morning Botha had been at the head of a party who had plundered you at Fort Armstrong?—When I was telling Mr. Wienand that we were plundered, Mr. Wienand said, "do you know any of the head men who were present?" I said I saw Mr. Thomson, Mr. Read, and Groepe there.

[Chief Justice.]—Did you mention anybody else ?—I said I saw the bull there.

Who is the bull?—Botha.

[Chief Justice.]—You are sure you told Mr. Wienand you saw the bull there?—I did.

The Chief Justice remarked that the jury would not fail to notice the apprehensiveness of the witness, and the peculiar celerity and energy with which he answered.

[Mr. Watermeyer.]—Then you mean to say that you reported to Mr. Wienand that Botha was amongst the head men of those who plundered you ?—Yes. Then Mr. Wienand wrote a letter, and I was directed to accompany the Rev. Mr. Thomson, and see if I could not recover the property.

[Chief Justice.]—To whom was that letter written?—It was not given to me, it was given to the Rev. Mr. Thomson. (The interpreter remarked, he presumed it was a search warrant.)

These horses which you say you were plundered of were horses that you had got from the people of the Kat River ?—We got them from Mr. Wienand; one of them was his own property. They were given to us by Mr. Wienand to take the letter.

Do you know what became of the horses on which you had ridden from Fort Hare ?—They remained at Fort Beaufort; I do not know what became of them.

Are you sure you saw Botha there at the time they took the horses from you?—Yes, I did see him.

You did not think, though, that they were really going to shoot you?—Not till after that young man told me, "Do you hear, brother, that Botha says we are to be killed?"

Attorney-General.—Who was that young man?—Swartbooy Mafee.

The Attorney-General called SWARTBOOY MAFEE.

Mr. Watermeyer objected to the evidence of this witness being taken on the ground that the law as to the admissibility or non-admissibility of witnesses in cases of treason in England was introduced into this colony by Ordinance

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72, section 49, whereby it is enacted "that in every case in which any person shall be prosecuted within this colony for the crime of treason, or misprision of treason, no witness shall be competent, nor any evidence admissible or sufficient to convict the person so prosecuted, who would not be competent, or which would not be admissible or sufficient to convict such person, if prosecuted for any such crime in any of His Majesty's Courts of Record at Westminster; and in every such case, every witness shall be competent, and any evidence shall be admissible and sufficient to convict any person so prosecuted as aforesaid, who would be competent, or which would be admissible and sufficient to convict, if such person were prosecuted as aforesaid in any of His Majesty's Courts of Record at Westminster." And that this witness had not been included, or properly described, in a list of witnesses which should have been furnished to the prisoner as required by the statute 7th Anne, cap. 21, § 11. Quoted Taylor's Law of Evidence, vol. 2, p. 910.

The Attorney-General waived the examination of this witness, and called

Biyosi, a Fingo.

[By the Attorney-General.]—You remember going from Fort Armstrong to Fort Hare?—Yes, I still remember it.

And from Fort Beaufort you went back to Fort Armstrong in the night?—Yes.

How many of you?—Seven of us.

When you returned to Fort Armstrong, what occurred?—Myself and three others went into the town of Fort Armstrong. We went in amongst the Hottentots, and immediately we were separated, and the Hottentots came round us; one was taken to one part, and another to another. Jan Fourie came up just at the time we were being plundered by the party who had charge of me. He asked me where my things were, and wished me to point out those Hottentots who had taken them. I went in search with him, and we found the gun, and also the horse, which I got back through Jan Fourie.

[Chief Justice.]—What did he do to get them back?—He took them from the persons who had plundered me.

How? by force?—Yes.

What then?—When this was going on, Botha came from a large crowd of people above where I was standing. He did not come up to me, but he made his appearance. He said, "I do not want to look at the Fingoes, take them away and shoot them at the krantz over the hill." Jan Fourie said to me, "Don't leave me; go wherever I go; or else the Hottentots will do you some injury." We went both together to Mr. Read, sen. When we got to Mr. Read's, Fourie gave me my gun, the horse was given up to Mr. Wienand. I remained at Mr. Read's place.

Then that is all about Botha?—Yes.

Then you don't think they meant to shoot you at all?—I did not think so until Botha said, take these Fingoes and shoot them at the krantz.

You do not think he meant it?—I do, for they immediately came and surrounded me with their guns in every direction.

But they did not push you or drive you?—They took hold

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of me and tore my jacket, and took some soap I had in my pocket. Jan Fourie came up, and then I went with him.

[By Mr. Watermeyer.]—You say Jan Fourie came, and gave you your horse and your gun?—The horse was given to Mr. Wienand at Philipton.

Was it after or before Fourie came to your assistance that Botha spoke of taking you to the krantz to shoot you?—It was before.

You say in your deposition that Botha remained with you while Fourie was with you?—(The witness seemed not to comprehend the question.)

[Chief Justice.]—Do you think that Fourie must have seen Botha?—I should say he must. Botha was not far off, and Fourie was close to me.

Did Fourie hold you by the arm when Botha made use of these words?—Yes he did, and he kept hold of me round my body, when the Hottentots came round me with their guns.

Was Jan Fourie assisting you, when, as you say, one of the Hottentots pointed his gun at you?—Yes.

Did the Hottentots cock their guns?—One Hottentot, a short man, did cock his gun.

[Mr. Watermeyer.]—I want to call your attention to one thing. You stated before the magistrate, "One Hottentot cocked his gun and presented it, and my firm belief is, that if Jan Fourie had not protected me, the Hottentot would have shot me." Is that so?—Yes, that is what I said.

[Chief Justice.]—Is that true?—Yes it is.

[Mr. Watermeyer.]—Although Botha said you were to be shot, yet nobody took you to the krantz to have you shot?—Nobody took us to the krantz.

And yet you say that Botha ordered the Hottentots, and they obeyed his orders?—As far as what they did, and presenting their guns, they listened to Botha.

[Attorney-General.]—Did any other man interfere to protect you that day, except Jan Fourie?—That was the only person I know who assisted me.

Did Botha speak more than what you said, or did you understand all he said that morning?—I understood what he said.

Did he say anything more that you remember, than what you stated here to-day?—That is all.

[Chief Justice.]—Are you still in the Fingo levy?—I have been 10 months in the Fingo levy.

[Mr. Watermeyer.]—Why did you not complain until a year afterwards about Botha especially?—The serjeant Klass told me that he had told the magistrate.

When?—Klass told me that he had told the magistrate immediately.

[Chief Justice.]—Then you never made any report against Botha at that time?—No.

But you did a long time afterwards?—I did.

Why did you wait so long before you gave the information?—Klaas Mafee, our serjeant,—he did it.

You do not mean to say that Andries Botha was worse than anybody else there?—From the language he used I considered that he was worse than the others.

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You did not believe that he really meant to shoot you?—When I saw the Hottentots presenting their guns I thought he was in earnest.

Now, do you believe that you would have been shot that day if Jan Fourie had not been there and assisted you?—Yes, I believe I should.

The Chief Justice remarked to the jury that they would observe these were no ordinary witnesses. There was a manner with them in giving their evidence which the jury could not fail to observe. There was not merely a quickness and readiness, but a precipitancy and energy in their answers which had its character. No sooner was the sound out of the interpreter's mouth than the answer was given. It appeared almost like a chemical process,—the moment the question is given the result is produced.

The Attorney-General said,—this was the only evidence he would at present offer on the first count. He would now pass on to the second.

Boko called and examined.

I am a Fingo of the Alice Fingo levy, and have been from the first day the war broke out. Before the war broke out I was acquainted with Botha. I was residing at the place of Mr. Read, sen. Botha resides not very far off. I have spoken to him before the war. I could not mistake any other man for Botha; I know him very well. I recollect being sent by Col. Somerset to Fort Armstrong with Mango, the serjeant, and Pempeni. I do not know what month it was. It was summer before Col. Somerset's commando during the same month.

The Chief Justice remarked that he understood this as meaning within a month of time, not a calendar month.

We took the letter from Alice. If we found any of the English persons still at Fort Armstrong we were to give the letter to them; if not, we were to return with it. Seven Fingoes had come to Fort Hare from Fort Armstrong, and two days afterwards I started. We reached Fort Armstrong about daylight, and off-saddled under a tree a little way off. Mango told me and Pempeni to go in. I said I was afraid I would be killed. Mango told me to go, for if I was killed I was a soldier under the Government. I then went in to the fort.

[Chief Justice.]—What made you afraid to go into Fort Armstrong?—Because it was war.

How did you know it was war?—Because I had already fought at Fort Hare.

With whom did you fight?—Sandilli's people covered the ground at Fort Hare.

Did you then go into the Fort on foot?—No; on horseback.

Alone?—Yes, alone.

Where did you go?—I went across the river, and found Hottentots posted as sentries below a shop before you get into town. I said good morning to these sentries, and they gave me no reply. I then cantered the horse, and got into the street where there were a number of Hottentots. I bid them good morrow, and the whole of the Hottentots cried out "morrow! morrow! morrow!" Botha then said to a man of

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the name of Coto (the Kafir name for Willem Brass) "Ask this man where he came from at this time of night." Coto then said, "You, Fingo, where have you come from at this time of night?" I said, "I have come from above from Joe's place" (meaning Mr. Joseph Read's camp in Tambookieland), I said, "I have been sent by Joe to see whether his father was still well." Coto said, "You tell lies; you belong to the levies; you have got government horses and government property about you now." Botha then said these white bandages which you have on are what killed my friends at Fort Beaufort and Fort Hare. (The Fingo levy had white bands round their hats.)

[Chief Justice.]—As a matter of history, when was the attack made on Fort Beaufort?

[Attorney-General.]—On the 7th of January, my lord.

[Chief Justice.]—Well, what further occurred?—Botha then said to Coto, "What are you talking so long with the enemy for?" He then told me to get off the horse, at the same time seizing it by the bridle. Coto then took the saddle off the horse, and took the blanket from under the saddle, and took the gun from me and the pouch, and also my haversack, with two loaves of bread. The horse was then taken away along the street to other horses.

[Attorney-General.]—Do you know whose the other horses were?—They belonged to the Hottentots at Fort Armstrong, I suppose.

[Chief Justice.]—Who led the horse away?—Coto.

[Attorney-General.]—Were there many Hottentots there?—Many, many; there were as many as the people on the jetty when the Governor left.

Were there more Hottentots than there are persons now in court?—There were more.

When Coto took the horse away, where was Botha? (Witness pointed out a distance of about six yards.)

When Coto led the horse away, what became of you?—I remained there. I then said to them, that I had been sent by Gen. Somerset to see whether the teachers were safe. Botha then said, "Don't you know, you Fingoes, that I was the person who went and took you out from Hintza's country?"

He said this to you?—With his own mouth.

What did he say?—He said, "How is it that when I brought you out of Hintza's country you should now turn round and assist the English, you Fingoes?—This year I am fighting, and we shall drive you and your little English captains into the sea water." Some horsemen then went and brought in Pempeni and Mango.

When Botha said this, did he speak it softly, or how?—He was very angry, and he spoke it very loud.

[Chief Justice.]—Do you think the people heard him?—I heard him myself, but there were no other Fingoes there. He spoke as loud as I am speaking now in the Kafir language.

[Attorney-General.]—Do you know a man of the name of Jordaan?—Yes.

Did you see him that day?—I did.

Which did you see first, Botha or Jordaan?—Botha.

When Botha spoke this to you was Jordaan there?—He had not come up. Before Jordaan came up, it was raining at

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the time, Botha went along a stone wall where there is a kitchen. He went to a house where the saddle was put that was taken from me.

Jordaan took you and gave you some coffee?—Yes, in a cup with a black rim.

You say some people were sent over the river for your two companions?—Yes; four men were sent in different directions; two one way, and two another.

Did you see Mango and Pempeni brought into Fort Armstrong?—Yes, they were brought where I was standing. Botha with a knife cut the string that fastened sergeant Mango's blanket, and took it away from him, and threw it to a Hottentot woman who was standing a little behind him. I cannot say what became of the horses and guns. They had been taken away, I cannot say by whom; but when they came up to me, the horses were no longer to be seen. Even young women were calling out, "Is it possible that we can behold a Fingo's eye in this place now."

[Chief Justice.]—Do you mean calling out loud?—Yes, making a great noise.

[Attorney-General.]—Did you see Commandant Groepe there?—I saw Groepe when we were being taken on, after we were threatened to be shot at the krantz.

Who threatened to shoot you at the krantz?—Botha.

[Chief Justice.]—What did he say?—He said, collect the Fingoes together, and take them, and go and shoot them at the krantz.

What language did he speak?—He spoke in Dutch to the Hottentots; he said it loud.

Did you really believe that you were going to be shot?—Yes.

Do you mean that they were actually taking you on the way to the krantz?—Yes.

Are you quite sure that Andries Botha said, take them to the krantz and shoot them?—I heard it myself.

[Attorney-General.]—Did he say this before or after he said I am the man that brought you out of Hintza's country?—After.

Was Jordaan also there when he spoke of shooting?—He was not there then.

Was Mango there at the time he said this?—Yes; we were all three together being taken to the krantz.

Had anybody hold of you at that time?—No, we were pressed on by Botha's people; some had guns and some samboks.

Did they use them against you?—No, they did not strike us nor aim at us; if I said they did I would be telling a lie.

Was it before or after you drank the coffee that Botha said this?—After I drank the coffee.

Then it was after you drank the coffee that Mango and Pempeni were brought in?—Yes.

Do you mean that you saw Botha again that day after he went beside the wall to the place where the saddle was?—This was the second time I had seen Botha.

Where was Jordaan the second time?—I don't know where he was, because after he gave me the coffee he went away.

Have you heard several people say that Botha was not at Fort Armstrong that morning?—What people?

Jordaan?—He was there.

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Was Groepe there?—Groepe came up when we were being conveyed to the krantz, opposite the powder magazine.

Was Botha with the crowd?—No, he was not among that crowd that was conveying us; he had remained at the larger crowd, who had stopped where we were plundered.

Did any of you three speak to Groepe?—We did.

Which of you?—Mango spoke to him.

Do you know in what language Mango spoke to him?—Mango spoke to Groepe in Dutch.

Did you understand him?—Yes.

What became of you?—We were taken under the protection of Groepe and Jordaan.

Where did Jordaan come up to you?—When we came opposite the tower, by the powder magazine where the guns are.

Did there appear to be any of the Hottentots who were for the Government?—There were some Bastards, who were above, who seemed to take no notice, and did not come near, but the real Hottentots, those with the curly hair, we saw that they were enemies.

[Court adjourned till the following morning.]

THURSDAY, 13TH MAY, 1852.

THE Court met at nine o'clock, and the witness BOKO was again put into the box.

[Cross-examined by Mr. Watermeyer.]—You said yesterday that Willem Brass took away your haversack, gun, &c.; was Botha by then?—Yes.

You said yesterday that while Botha was present, and this violence was being done to you, Jordaan was not present?

[Chief Justice.]—Do you apply this to the whole of the violence, or only to the time when the gun and haversack were taken?

[Mr. Watermeyer.]—Only to that time, my lord. [To the witness.]—Now, you said before Mr. Calderwood that at the time your haversack, gun, and things were taken from you Jordaan was by?—I did not.

Then the deposition of yours which was taken before Mr. Calderwood, states "They took our haversacks and what they contained. A man named Jordaan, who married a daughter of Groepe, who was standing by, said, "I never saw such a thing, that a man's things should be taken, and he killed who brings letters of Government."

[Chief Justice.]—Then, Boko, it is there taken down that you stated to Mr. Calderwood that Jordaan was by, and said something when your things were taken away from you. Now, recollect yourself, and say one way or the other,—was Jordaan by you or not?—Jordaan came after my things were taken away, and he gave me some coffee. Coto (Willem Brass) then came.

[Mr. Watermeyer.]—You said yesterday that Willem Brass seized your horse and took it away: is that so?—Yes.

You said before the magistrate at Graham's Town that Botha took the horse out of your hands?—No, I did not say that; I said this,—Botha told Coto to take the horse.

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Then what was taken down before the magistrate was either wrongly translated by Mr. Cyrus, or wrongly taken down by the magistrate?—No, I don't say that Mr. Cyrus made a wrong translation.

[Chief Justice.]—Did you interpret, Mr. Cyrus, on the occasion?—[Mr. Cyrus.]—I did, my lord.

We must always remember that it is a translation, and that no human being can take down statements so made with great accuracy.

[Mr. Watermeyer.]—I should not dwell upon this, knowing that it was a preliminary examination, but for the positiveness of the witness, who persists now in saying the very opposite of what is stated in his deposition.

The Attorney-General said, in justice to the prisoner, the whole of that part of the deposition should be read.

[Mr. Watermeyer.]—Well, I will read it. The witness, being cross-examined by the prisoner himself, said,—"You were the man who took the horse out of my hands. It was a yellow horse. A man named Jordaan was present while you took the horse away." Is that so?—I know what I said. I said that Botha ordered Coto to take the horse. He said, "Take the horse."

Was Jordaan then present?—No, he was not.

Then this is false that a man named Jordaan was there when the horse was taken away from you?—I did not say so.

Then this is falsely taken down?

[Chief Justice.]—You can tell that to the jury; it is of no use telling the witness that.

[Mr. Watermeyer.]—Was Botha present during the whole time until you were plundered?—He was present during the whole conversation, from the first, when I told Brass that I had come from Joe's place.

Now, during that conversation, was Jordaan present, or not present?—He was not.

If he had been present must he have seen Botha?—If he was present he must have seen him.

If he must have seen him, must not other people have seen him too?

[Chief Justice.]—Why put such a question? Can you call that a question? Suppose a man shut his eyes, how can the witness answer for his seeing? It is no question. [To the witness.]—At what time did Groepe come up to you?—When we came to the tower.

Was that after the plundering?—Yes.

Did Groepe say any thing about the shooting?—No.

[Mr. Watermeyer.]—Did you not before the magistrate state something that Groepe said about the shooting?—I said that it was through Groepe that our lives were saved.

Do you recollect any thing being said by Groepe as to don't shoot them at the post, but take them to the field?—This was addressed by Groepe to the Hottentots, when they were taking us on.

Was Botha there then?—He was not with that party; he remained behind.

Was this a yellow horse?—Yes, belonging to government.

Did you ever see that yellow horse again?—No, I did not.

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Did Botha see Jordaan take you away from the crowd when he gave you coffee?—No, Botha was not there then.

Where had he gone to then, had he gone right away, or was he in another part of the crowd?—He went round the house where the saddles were taken to.

[Chief Justice.]—He told us that before.

[Mr. Watermeyer.]—Do you remember during the courts-martial at Fort Hare seeing Jordaan near the sun-dial there?—Do you mean to have conversation with him?

Yes: did he ask you how could Botha be the man when he was not present, and you said that Botha being the chief of the pure Hottentots you considered him to be there?—I don't know that Jordaan ever said such a thing to me.

[Chief Justice.]—Do you recollect ever having had any conversation with Jordaan near the sun-dial at Fort Hare about the horse?—Yes, we did speak together about the horse.

Now, recollect yourself; what did pass between you?—We were talking about the horse, and Jordaan said it is through me that your lives were saved. I did not tell him that Botha was not there when the horse was taken.

But did you say that as he was the chief of the Hottentots you considered him present, although he was not?—I did not say so.

[Mr. Watermeyer.]—At the time of that conversation, do you recollect, was Groepe present?—He was not present. There was only myself and Jordaan. He said it was through him that my life was preserved. He saved me from the Hottentots.

Jordaan spoke Kafir?—He cannot speak much, he can speak a little.

MANGO called and sworn.

I am sergeant in the Alice Fingo levy. I know Mr. Calderwood. He is my chief. I remember being sent in the month of January last, from Fort Alice to Fort Armstrong, with Boko and Pempeni. A letter was given to us by Mr. Calderwood. We reached Fort Armstrong just about daylight; it was beginning to be daylight. I sent Boko forward alone, and I and Pempeni remained behind a little. I sent Boko to look. I was told to look for the magistrate, Mr. Wienand, and give the letter to him. I carried the letter. I off-saddled under a tree. I then saw some confusion where Boko was, and I saddled up, and went down into Fort Armstrong.

[Chief Justice.]—Amid that confusion did you see any thing particular that happened to Boko before you saddled up and went down yourself?—No; I could only see that there was some confusion.

Well, what happened then?—As I was going down I saw four men come out on horseback. Two of them came along the road, and two went round to go up the river. They afterwards came towards us. Pempeni came close up alongside of me. A tall Hottentot, one of the four, then rode up and levelled his gun at me. Pempeni drew my attention to it. He said, "Look out, you will be shot." The powder flashed in the pan. We then went over the river, and into Fort Armstrong.

[Attorney-General.]—Would you know the tall man again?—Yes, I should know him

Do you know his name?—I don't know his name.

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[Chief Justice].—Did the men attend you? Did they keep on each side of you when you went through the river into the Fort?—They went behind driving our horses and beating them.

While you were on them?—Yes.

Did they speak?—Yes, they spoke.

[Attorney-General].—What did they say?—When that Hottentot levelled his gun at me, a short Hottentot, one of the four, said, "Don't shoot him." Nothing else passed. I said nothing.

[Chief Justice].—How were you dressed?—I had a dark dress on.

Then you were not in the levy dress?—No, I was in my own clothes.

[Attorney-General].—Well, as you were being taken into Fort Armstrong, what did you see?—I saw Botha as I was being taken in through the gateway. He was standing near some stones. I was immediately taken to him. Botha then took my horse. I had been dismounted by other Hottentots, but not by Botha.

[Chief Justice.]—Do you mean that you were told to get off, or pulled off?—I was told to get off several times, and at last I threw myself off. Botha also took my gun.

[Attorney-General].—Had you known Botha before?—Yes.

[Chief Justice.]—How had he become known to you?—I did not actually live with him, but I have seen him at his place at the Umzibienzi River. I have seen him there twice, and I have always seen him travelling about.

You cannot mistake him, you think?—No, my eyes are good, they can see well.

[Attorney-General].—Describe what you mean by saying that Botha took your gun. Do you mean with his own hands?—With his own hands, and gave it to some persons who were standing round.

Was anything else taken from you besides the horse and the gun?—The pouch, and money, and a knife.

[Chief Justice.]—Who took the pouch?—Botha.

How did he get it? Did he ask you for it?—He cut my clothes with a knife.

How do you mean he cut your clothes?—He cut the piece of leather which fastened my blanket round my neck.

How did he get the money?—After he had cut the string of my blanket, he then took the money out of my trowsers pocket.

Do you mean that Botha put his hand into your pocket and took out money?—Yes.

How much?—Three shillings belonging to me.

Did he keep it?—Yes, he kept it.

Did he ever give you the knife back again?—No, he did not.

Did Botha say anything to you when he was taking the property from you?—He said, when he was plundering me, "I don't like to look at you Fingoes. How is that you go to assist the English?" He then said he would fasten me. He said, "You Fingoes, we shall send you over the sea. It was you that finished the people at Fort Beaufort and also at Fort Hare, notwithstanding that I went and brought you from Hintza's country."

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[Attorney-General.]—What became of the letters?—Botha took it.

[Chief Justice.]—How did he know that you had a letter?—It was in the haversack, and he took the haversack.

Was there more than one letter in the haversack?—I don't know; it was in a bundle fastened up.

Did you see him take the letters out?—I did not see him take the letters out; he took the haversack in which the letters were.

[Attorney-General.]—Then, you don't know what became of the letters?—No, I don't.

Did you see Groepe there that day?—Yes.

Did he come to where you were, or did you go to him?—It was when we were being driven before a party for the purpose of being shot.

[Chief Justice.]—How can you leave the transaction, Mr. Attorney?—I must go back.

[Attorney-General.]—I cannot lead the witness my lord.

[Chief Justice.]—Then I must ask,—Did anything more take place when your horse and things were taken?—Botha said, "Collect these Fingoes together, and drive them on, and shoot them over there."

Whom did he speak to?—To the Hottentots. He did not say anything more. The Hottentots then drove us, me, and Pempeni, and Boko before them.

[Attorney-General.]—Did Botha go with this party that were driving you, or not?—No, he remained still at the stones; and after that he went down to a small farm.

[Chief Justice.]—How could you say that, as they were driving you?—I looked back, when we got to the open space, and saw him.

Then you say Groepe came up while they were driving you?—Yes.

What distance had they been driving you by Botha's order when Groepe came up to you?—As far as from here to outside the court (40 or 50 yards.)

Had they been driving you that distance towards the place which Botha pointed out?—Yes; he pointed to a place below, and we were being driven in that direction.

[Attorney-General.]—Did anybody come up with Groepe?—I only saw him.

What passed?—He said leave these people alone, speaking to the Hottentots in Dutch; and they obeyed him; they stood. Groepe then took us all three to his house.

Did the Hottentots follow you to his house, or did you go alone with Groepe?—We went with Groepe alone. He told us to go to the fire.

Do you know the Rev. Mr. Thomson?—Yes.

Did you see him there that day?—Yes, he came up to us.

Where were you then?—At Groepe's house.

Did you see any letters at Groepe's house when Mr. Thomson was there?—We did not go inside the house.

But outside the house?—I did not see any letters.

In Mr. Thomson's hands or anybody's hands?—I did not see any letters there in anybody's hands.

Did the Hottentots that were ill-treating you say anything about the English?—Something was said about, why should

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we be for the English. Botha was there, and he said, "How is it that you Fingoes should turn to the English?"

Did any other Hottentots speak about the English?—I did not hear; they were making a great noise, but they did not address themselves to me.

[Chief Justice.]—Did you hear any of the Hottentots say anything about the English?—There was too much confusion and too much noise, the street was full, and they were talking loudly,—so much that you could not make out what one said.

[Attorney-General.]—Did you quit Fort Armstrong that day?—Yes, according to directions given to us by Groepe which way we were to go; we all three went and ran into the bush for safety.

[Chief Justice.]—What were you afraid of?—Of the Hottentots.

What did you fear at their hands?—That they would kill us.

[Attorney-General.]—Do you know Brass?—Yes, I know him by sight.

Did you see him that day?—I saw him at a distance.

He did not come up and meddle with you?—No.

[Cross-examined by Mr. Watermeyer.]—You said just now that Botha took your haversack containing the letters?—Yes.

You said before the magistrate that you took the letters out of your pocket to give them to the magistrate?—I did not say that.

[Chief Justice.]—This was when you were before Mr. Calderwood?—I did not say that to Mr. Calderwood. I know what I said to Mr. Calderwood.

Well, what was it you did say?—I told Mr. Calderwood that the haversack was taken by Botha.

But if he took the haversack, you could not take the letters out of your pocket, for the letters were in the haversack?—I did not say that I took the letters out of my pocket; I did not say so.

They have taken it down so?—I don't know anything about that, but I told him what I am repeating now.

Who was the Interpreter?

Mr. Cyrus said there was a Kafir interpreter.

Mr. Watermeyer observed, he was a very clever man too. Mr. Menzies had praised him immensely.

[Chief Justice.]—Then, that is not true which is written there?—I know nothing about what is written there. But these are not my words.

[Mr. Watermeyer.]—You said just now that after Botha took the letters you knew nothing of them?—Yes.

Well, you said before Mr. Calderwood, that the letters were given up to Groepe, and that you saw Groepe give them to Mr. Thomson?—I know nothing about that word.

You must recollect something about it; recollect yourself? I told Mr. Calderwood that Botha took the letters from me.

But Mr. Calderwood is your chief; he would not write down what you did not say?—I do not know anything of these words. I said to Mr. Calderwood that the things had been taken from us.

But you said to Mr. Calderwood that the Hottentots took them?—I said that Botha took them.

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Now, recollect yourself. Wait and think. Did you or did you not see Groepe give the letter to the Rev. Mr. Thomson? —I saw Groepe give Mr. Thomson a little letter.

Where was that?—Above, in front of the house.

Just now you said that you saw no letter at Groepe's house, and now you say you saw a little letter. Was that the letter you had brought?—I could not say, for the letters were taken from me.

I want to know what is true and what is false. What you said a little while ago to me, or what you said now to the Chief Justice,—whether you saw Groepe give Mr. Thomson a letter, or whether you did not see Groepe give Mr. Thomson a letter?—I am telling what I saw.

[Chief Justice.]—That is no answer. Did you see the letter given or not?—I did see a small letter given, but I did not see any large one given.

And was it a large packet you brought?—It was a small packet; I do not know the size of the letters inside.

What was the size of the packet?—(The witness showed a quarter sheet foolscap, and placing his hands nearly close together to show the thickness of the packet.)—It was of this size fastened up.

[Mr. Watermeyer.]—Now, before the magistrate you know you said nothing about "I don't like to see you Fingoes," and "I took you from Hintza's country"?—I did; at Graham's Town I said it.

You did not say that to Mr. Calderwood immediately after? —He put questions to me and wrote; he did not allow me to make my own statement. He put certain questions to me.

[Chief Justice.]—I have put it down that you told Mr. Calderwood all about it?—I told Mr. Calderwood all that he asked me; I did not tell him all that Botha said, for he did not put questions to me.

The Chief Justice said, the jury saw the witness and heard his statement, and it was for them, and neither for him nor for Mr. Watermeyer, to estimate its value. This was the great glory of jury trial that the witness is seen and heard.

[Mr. Watermeyer.]—You said that as you were taken to the fort by the four men, the tall man levelled his gun, and the short man said, "Don't fire." Would you know that short man again?—I should know him; but I don't know his name.

Did he accompany you up to where Botha was?—I did not see him afterwards; the people were so many.

How far did he go with you?—He went to the gateway, and then I did not see him afterwards, in consequence of the number of people.

[Chief Justice.]—Am I to understand that this investigation by Mr. Calderwood was judicial?

[Attorney-General.]—Yes, my lord.

[Chief Justice.]—One would think it rather a statement than a deposition; that it was done rather as Civil Commissioner than as Magistrate.

[Attorney-General.]—Your lordship is right. It was taken as a statement, and afterwards sworn to at Graham's Town.

PEMPENI called and sworn.

[By the Attorney-General.]—I am a private in the Alice levy. I know Andries Botha, the field-cornet. I have known

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him from the time I was a boy. I lived in the upper part of the Kat River with a man named Tys. If you started in the morning you would get there by midday. I served in the last war. I knew Mango and Boko in the last war. They were then in the same levy with me. I recollect their being sent with letters to Fort Armstrong after Alice was attacked by the Kafirs. It was said that the Kafirs were on the other side. I did not see them myself. I do not know if there were any Hottentots. When we got up to Fort Armstrong that morning, Boko went in first.

[Chief Justice.]—Why did you not go?—I was afraid.

Why were you afraid?—I was afraid of the Hottentots, because they were fighting then?

But they were not fighting then?—Who says they were not fighting then?

Where had they fought then?—Had they not fought at Fort Beaufort?

Then the Hottentots were in a state of war?—Yes, all the Hottentots were at war.

Then you looked upon them as enemies, and were afraid that they would—do what to you?—Beat you, or what?—Kill me.

[Attorney-General.]—Then, after you saw Boko go into Fort Armstrong what took place?—We saw that Boko did not come out again. We had told Boko what he was to do; that if the Hottentots were not in a state of warfare, then he was to wave his hat. He did not come out and we rode down, and as we were going in to the town four Hottentots came out and rode up to us. Two came to me and two went to Mango. I was in front, and when I looked back I saw one of the Hottentots levelling his gun at Mango, and the powder flashed in the pan. He might be as far off as the screen is from here (about ten yards).

Was he a tall or a short Hottentot?—I did not take notice of that?

Did any one say anything?—There was one who spoke; he said, "Don't do that to these people; they will be put to death according to law at the post."

[Chief Justice.]—Did you say any thing to Mango when you saw this Hottentot level his gun at him?—No, I merely looked with my eyes.

[Attorney-General.]—What happened then?—We went over the drift. We were on horseback; but one of the Hottentots seized my gun and told me to dismount. I did so; he then took my pouch off; this was before we got to the post; he took my gun and my horse, and told me to ride his, and he rode my horse. We then went to the post.

[Chief Justice.]—Did you go quietly?—They drove us in front of them, and beat the horses we were on.

Could you see the crowd of Hottentots at the time you were passing across the drift towards the fort?—Yes, a great number.

Do you think the people within the fort could see what took place while you were crossing the drift?—They could see, because they came from the fort.

Could they see, then, that these Hottentots were driving your horses on?—Yes they did, because they were looking at us as we were coming on.

[Attorney-General.]—Well, when you got into the street or

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square of Fort Armstrong, what took place?—They took hold of me, and pulled me off the horse.

Where was Mango then?—We were both taken off our horses together.

Did you hear anybody speak to the Hottentots of what they were about to do with you?—They were to kill us.

Did you hear any orders given to the Hottentots about you?—Botha was the person who ordered them to kill us.

Did you see Botha there?—Yes, he was standing among the Hottentots as far from me as the jury-box (about five yards,) and there were a great many people, as many as there are people in court; I could not say how many there were.

[Chief Justice.]—Were they noisy, or quiet, or how?—They were all in a confusion.

Now, will you be very particular, and tell us what Botha said?—Botha said that he had brought us from Hintza's country; he said, "I took you with clean hands, but this year I am fighting, and I shall drive you with your little chiefs over the sea-water. You know, you Fingoes, that you finished our friends at Fort Beaufort." He spoke in Dutch; he said, "Bring de Fingoes saame, en schiet voor em dood by de kraantz." These were his words.

Did they drive you?—Yes.

And who stopped you from being shot?—Groepe stopped it. We were being taken on our road to be shot towards the tower, and Groepe came.

[Attorney-General.]—Was Groepe's house next the tower?—Yes, facing the powder magazine.

Did Groepe say anything?—Yes, he said, "Geef de volk hulle goed, en laat zulle loop." When Groepe said this, Botha said they shall not get the things.

[Chief Justice.]—Was Botha near enough to be seen?—(The witness indignantly.)—Could a man be there and not be seen?

[Mr. Watermeyer.]—Must Groepe then have seen Botha?—He was there, and it was daylight; how could he not see him!

[Attorney-General.]—You say there was a crowd of Hottentots?—Yes, the place was full.

[Chief Justice.]—Had they arms with them?—Some had guns, and some not. There were with guns and many without guns.

When Groepe said this, what did you do?—I went to the fire.

Now, remember what you told me that Botha was near enough to hear?—Yes, I will take care.

The Hottentots were driving you towards the krantz when Botha came up?—Yes, we were being taken to the krantz; but when they saw Groepe coming they turned, and made as if they were going to take us to the tronk.

How far had they taken you?—As far as the street outside of the court. When they let us go we went into the bush, and home to Alice. We did not go to Philipton, because Groepe said some of the Hottentots were fighting.

Then you went into the bush in order to avoid the Hottentots?—Yes, to hide ourselves.

[Attorney-General.]—Did you tell Groepe what had taken

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place that day?—We said, "you see the way we have been used." (The witness who appeared unwell was here accommodated with a chair.)

[Chief Justice.]—Did you see anybody beaten that day?—They pulled us about; they did not strike us; they kept pulling and pushing us about; but I did not see any one beaten there.

[Cross-examined by Mr. Watermeyer.]—If I understand you, you said just now that when you were being taken to be shot, Groepe came and said, "Let these people have their things?"—Yes.

To which you say Botha replied they shall not get back their things?—Yes.

In the deposition before the magistrate you said you did not hear Groepe talk to the people at all?—I don't recollect it.

You said there, "I did not hear Groepe speak among the people, but he took us to his house?"—It was through Groepe speaking the words he spoke, that we are now here.

Then you did hear Groepe speak to the people?—Yes, I did.

And what you said before the magistrate was wrong?—What did I say?

You said, "I did not hear Groepe speak among the people?"—It is not so.

[Chief Justice.]—His not speaking at one time does not prove that he did not speak at another.

[Mr. Watermeyer.]—He said Groepe did not speak, but he took us to his house. It is in one sentence. [The witness,]—Groepe did speak, and it is through him that I am alive. I did not tell the magistrate that I did not hear Groepe speak.

[Chief Justice.]—Did you tell your story, or did you merely answer the questions of the magistrate?—I told the magistrate what I knew; but I did not tell the magistrate that I did not hear Groepe speak. I will not admit that I said words that I certainly did not make use of.

[Mr. Watermeyer.]—Then, now you say that Groepe did speak and that Botha was close enough to hear him, and to make a reply?—Yes, he was near; I saw him. Groepe said, "Give them back all the government things, and let them go." Botha then said, I heard him say, "They shall not get the things."

[Chief Justice.]—And you did not get the things?—No, we did not; we merely took sticks to defend ourselves with; and that was the only thing we took away.

[Mr. Watermeyer.]—You said that one of the Hottentots wanted to shoot Mango; another said, "Take them to the tower, there they will be dealt with according to law."

What did he say in Dutch?—I cannot say it well; I can only hear Dutch with my ears.

As near as you can?—He said, "Munna skiet here, munna skiet here, breng daar, dood make." (The interpreter remarked that the witness had not conveyed the whole of his former answer, which expressed in the Kafir language, "deal with them according to law.")

[Mr. Watermeyer.]—I believe that the man who told the other Hottentot not to shoot is here; and we shall show that he did express this, but with a friendly intent.

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[Chief Justice.]—I consider that the jury must feel that the intent was friendly,—to put them off the immediate execution. Would you know the Hottentot who said this?—Yes.

Did he take the horse?—No.

A Hottentot named Christiaan Zeeland was here produced, and identified as the man who saved him from being then shot.

The Attorney-General said he would now for some reasons pass over the third count, and bring evidence on the fourth.

HERMANUS LOTZ, called.

[By the Attorney-General.]—I am now under sentence at Bain's Kloof. I was convicted by the court-martial at Fort Hare. It was said I was amongst the rebels. Before the war broke out in 1850 I lived near Fort Armstrong. I had lived there since shortly after the war of 1835. The place has no other name than Fort Armstrong. At the time of the breaking out of the war I was provisional field-cornet. I was appointed by Mr. Wienand. I cannot say certainly how long I had acted. I think about three months. I heard of the war having broken out in Kafirland, and of the attack on Fort Beaufort where Hermanus Matroos was killed. I was then at Fort Armstrong. I knew a man named Willem Uithaalder. He was called the general of the rebel Hottentots. I remember his coming with his commando one day, at the beginning of the year, to Fort Armstrong. His camp was then at the Upper Blinkwater, which is nearer to Fort Armstrong than Lower Blinkwater. Before the rebellion the people who lived at the Upper Blinkwater were Ghonas and Hottentots. They were the rebels.

Mr. Watermeyer objected, that this man was stating merely what he had heard.

The Chief Justice said, it was to show the state of the times. It must be taken that there was a rebellion. [To the witness.] —Who was field-cornet of the Upper Blinkwater?—Botha.

Did these people turn rebels after war broke out?—They did.

Did Andries Botha continue to live in the same place, or did he change his residence?—He went to Philipton.

[Attorney-General.]—Was he in the habit of coming from Philipton to Fort Armstrong to see the magistrate?—Yes.

What is the distance?—Six or seven miles,—about an hour.

Did he come there frequently?—Cobus Fourie, the field-cornet of Philipton, and Botha slept at the fort alternate nights; one of them slept there every night. Sometimes they used to come late, and sometimes early.

[Chief Justice.]—Did Botha spend portions of each day there, as well as sleep?—Yes, because one had to wait until the other relieved him.

What had they to do?—I cannot say; I was informed that they came in place of the commandant.

[Attorney-General.]—Groepe was sick, and they used to come alternately to give him assistance; Mr. Wienand knew of it. When Uithaalder's commando came to Fort Armstrong did you expect an attack, or did he come unawares?—We did not expect it, until Botha came to report that they were advancing.

Before it was known that Uithaalder was coming that morning had you seen Botha?————

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[Mr. Watermeyer.]—Before my learned friend goes further, I object to the course of examination, which it is quite evident he is about to pursue. As the question he has just put enters upon the transactions of the 22nd January, I think it is the proper time for me to make this objection. It is quite clear, that what my learned friend wishes to attribute to Botha in communicating with the rebels, previous to Uithaalder's visit, is an overt act of treason; which he would have made the ground of another count, if he had known of this man's coming from Bain's Kloof.

The Attorney-General contended that he had not come to any overt act; and after some discussion Mr. Watermeyer waived the objection for the present.

[Attorney-General.]—Did you see Botha leave Fort Armstrong before the commando came?—I saw Botha leave Fort Armstrong that morning about sunrise. Three of them went in company; young Piet Bantam, old Piet Bantam, his uncle, and Botha.

[Chief Justice.]—Armed, or not?—They had no guns.

[Attorney-General.]—On horseback?—Yes.

Did you see Botha return?—I did.

Did he say any thing on his return?—I heard what he said to commandant Groepe. I stood with them. He said, "I told you daily that you must help me to speak to these people; there they are coming now."

Was the commando in sight?—Yes, we could see them.

What more did he say?—He said, "They are not now coming to fire, they are only coming to speak." I did not hear what Groepe said; I said nothing. When Uithaalder's people arrived at the other side, Groepe, Botha, and the Rev. Mr. Thomson crossed over to them. As far as I could see, Uithaalder's people came to the top of the hill, and then he left them, and came forward with a few of them.

Was Cobus Fourie one of the party who went out?—Yes.

You did not go?—No.

Well, what took place?—They returned after a little time. I asked them what the people had said. Botha and Cobus Fourie were both present. They said, Uithaalder said he would give the people of the krantz two hours to get ready, and then he would be ready to fight.

[Chief Justice.]—Were they to have two hours to prepare themselves to fight?—Yes. The English people were with us, and if we did not deliver up the English people in two hours, we must fight.

[Attorney-General.]—Who told you this?—I think it was Groepe, who said this.

Did Uithaalder come into Fort Armstrong after that?—A short time afterwards Uithaalder came into Fort Armstrong with thirty men, all armed.

After Uithaalder and his people came in, did you say anything to Botha?—Yes, I said what are we to do, are we to fire?—for I see the horses of the English are being taken out of the stable. Groepe, Botha, and Fourie were together. The commandant said, "You may now fire." Then Fourie and Botha said, "No, don't fire." Botha spoke first, and Fourie immediately after him. Botha said, "Don't fire," and Fourie said the same. A second time I came up to Botha,

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and asked again, are we to fire now? It was not longer than one might have counted 200, since I asked him the first time. I had been speaking to Marthinus Appel. I saw the commando were coming nearer the fort, and therefore I asked him again. Botha answered me, "Will you spill your blood for the English blood?"

[Mr. Watermeyer.]—I believe it is now clear, that although not at the right instant, I rightly took the objection to this course of examination, knowing to what it would lead. There is ample evidence to contradict every word that this convict has said; but I wish to avoid a mass of illegal evidence being put into the case. I wish my learned friend to adhere to the counts charged, and avoid going into separate acts upon the evidence of this man, which if he had been aware of he would have made the ground of another count. It is not competent for him while saying that he intends to prove an action at Balfour, and the presence of Botha on the 22nd February, to bring in evidence in respect to Botha's conduct, which if the statement of this man were true, was on that occasion an overt act of treason. If it could be proved that the defendant stopped the people of Fort Armstrong from encountering the enemy as stated by this man, and if subsequently he made use of the treasonous expressions spoken of, it ought not to have been brought on in a count with which this act has nothing to do. Quoted Roscoe's Criminal Digest, p. 81.—"Thus in treason, no overt act amounting to a distinct and independent charge, though falling under the same head of treason, can be given in evidence, unless it be expressly laid in the indictment."

[Chief Justice.]—Do you mean that this is not proper introductory matter to the affair at Balfour?—You may put a gloss upon it, but to ask whether a man will shed his blood for the English is not necessarily treasonous. He might be sounding them whether they would actually do so in order to save the English. The Attorney-General said, he will show what was his intention, and he may give evidence of that. It is the picture of the man; it is the anatomy of his purpose. The principle you have read is that you may not give evidence of one overt act to prove another. I cannot say but what this may be introductory matter. It may not be relevant, but how far it may be I am not at once to determine.

[Attorney-General.]—My learned friend quoting from an English authority refers to an act of William III., which is not quoted by Roscoe in full, but it may be in that book before your lordship. It is laid down as "expressly enacted that no evidence shall be admftted of any overt act not laid in the indictment (7 & 8 W. III. c. 3, § 8), that is to say, no overt act amounting to a distinct independent charge, although it be an overt act of the species of treason charged, shall be admitted in evidence, unless it be expressly laid in the indictment; but if an overt act not laid amount to a direct proof of any other overt act which is laid, it may be given in evidence to prove such overt act." My learned friend has had free access to every document and paper connected with this case at the earliest possible moment.

[Chief Justice.]—I never heard of such access or such a course of proceeding. As for liberality, that is not the term for it.

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[Attorney-General.]—My learned friend says, it must be a substantive charge. I say I do not propose to give evidence of a substantive act of war on the day that Uithaalder's commando arrived; but will show the state of feeling previous to the act.

[Chief Justice].—As previous libels to show the animus of any libel.

[Attorney-General.]—Or previous declarations of malice in case of murder. Then previous deelarations having direct reference to the state of feeling leading to fighting must be admissible, *quantum valeant* the jury having to consider the weight to be attached to them. Suppose I intend to prove that Bothà said, "There must be no fighting to-day, because when the Winterberg boers come down it will be found that I am in my place,"—will it be said that it would not be competent to prove that? It would upset the practice of the court, if declarations of the prisoner, which do not amount to a substantive charge, but are connected with the charge against him, are not to be given in evidence. We shall have plenty of evidence of another nature, and it will be sufficient to have put the question; but I contend that it is not illegal to prove under this count, that the prisoner said, "Don't shoot; are you prepared to spill your blood for English blood?" It may be said, that he saw the commando was large, and the fort was weak, and he meant, "Will you commit an act of madness, and throw away your lives, for Englishmen whom you cannot save?"

[Chief Justice.]—Every one will see that the learned counsel is only doing his duty in taking the objection. I feel it my duty to pay every respectful attention to a legal objection, and I hope he will not think that I was unwilling to hear him upon the point. At the same time, I do wish that there should be no running commentary upon the evidence as it is produced. To say, "I have ample evidence to contradict every word uttered by the witness" is not in true, judicious, court behaviour, with regard to witnesses. It appears to me that it is fully competent for the prosecutor to put this question. The prisoner had asked, "Shall we fire?" He says no. The enemy comes nearer, and he is again asked, —"shall we fire now?" Whatever might be the answer, it can only show the state of feeling. What is the principle that is sought to be applied? It is, that a man shall not be tried without notice. But no charge is made with respect to what passed on the occasion. Words are not acts. Speeches cannot be facts. It is a mere utterance of purpose. To say that I cannot take a man's words because I cannot charge him without notice, is not in the same proposition. There may be a thousand reflections which divert from the intention of the prosecutor in putting the question. It appears to me, therefore, that we should hear all that was said on the part of the prisoner. In cases of libel and murder, you may show the intent of the act which is made the substantive ground of action. It appears to me that otherwise I should do violence to a common principle of law, for *non constat* that he will not show that he was the most loyal man in the world,—*non constat* that he did not give information to Government. Under these reasons, I cannot reject the answer to the question.

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[To the witness.]—What answer did Botha give when you asked the second time whether you should fire?—Botha asked me, "Will you spill your blood for the English blood?"

What further passed?—I then left him, and did not speak to him any more.

Then you did not answer him?—I did not give him any answer.

Why did you not answer? had you a reason?—I saw that he was not right; that is, he was not siding with me.

[Attorney-General.]—Was there any firing that day?—No.

How long did Uithaalder and his thirty men remain in the fort?—Not long; I think half-an-hour.

[Chief Justice.]—They took nothing?—They took two horses.

[Attorney-General.]—Whose horses?—John McMaster's.

Is that all they took?—All I saw.

How many Englishmen were in the fort that day?—I think about thirty.

Were they armed?—All armed: they had come there for safety.

And from your knowledge as field-cornet could you say how many Hottentots would have been prepared to fight for the English that day?—About 40 or 42.

[Chief Justice.]—How do you know?—I know them; they came up to me, one after another, asking if they should fire.

[Attorney-General.]—Before Uithaalder went away, was a time fixed that the English should leave the place?—Yes, they were to have three days.

[Chief Justice.]—How do you know?—I was present.

Was Uithaalder there?—He was not. Uithaalder sent three men to the commandant. I heard what they said. They said, "within three days all the English were to be away from the krantz, but they were to leave all their property behind." I cannot say whether that included sheep and cattle. I cannot say for certain what answer was given to these men. The Rev. Mr. Thomson spoke to them telling them rather to settle it peaceably. Botha, Fourie, Groepe, and Thomson were present then, and a good many other persons; but I don't remember their names.

[Attorney-General.]—After Uithaalder had gone away did you see anything?—I saw that when Uithaalder went to the other side, Botha left this side going towards Uithaalder.

[Chief Justice.]—Then Uithaalder was still in sight when you saw Botha follow him?—Yes.

And he joined him?—He did.

[Attorney-General.]—Did he come back to the fort?—He did, in less than half-an-hour.

Did he say anything on his return about the English people going away?—I heard nothing.

When did the English go away?—The next day.

What time of the day did they go away?—Nearly sunset.

Did you go with them?—I went before them to get people on our side. Mr. Wienand told me. I got twenty. I called upon some of the farmers to see which of them was still on the side of the government. When I got back they were just going. Mr. Wienand left the same night, and went to Philipton.

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After the English were gone, what became of their shops and property?—The shops were broken open, and the things were taken out;—some of them were afterwards taken to Philipton, Eland's River, Lushington, and elsewhere; and some remained in Fort Armstrong with people that resided at the place. Only the shops of the English were broken open. They were going to break open the house where Mr. Wienand's things were; they belonged to the minister, and so I saved them.

[Chief Justice.]—What sort of people remained?—Some were on the part of government, but the greater part were on the other side. They became rebels after the English left.

I suppose you cannot tell me why they became rebels?—That I cannot say.

[Attorney-General.]—Did you continue living at Fort Armstrong until General Somerset came, and the Fort was attacked?—Yes.

Do you recollect Gen. Somerset coming there with troops?—Yes.

From what side did he come?—As if from Kafirland or Lushington.

Well, when the General was coming up from Lushington side did you see anything of a commando of boers coming down also?—Yes; they came early that morning, at daybreak, in the other direction.

About what hour that morning did you first see that there were boers coming down?—I did not see, but I heard the firing of guns.

From what side did the firing come?—From the Balfour side.

How far is Balfour from Fort Armstrong?—Not half-an-hour (about two miles.)

Do you know who were fighting at Balfour?—There were the Ghonas and the farmers the first; there were Hermanus* and his people, bastard Hottentots and bastard Kafirs.

Was there much firing that day?—A great deal; it continued from daybreak till 10 o'clock.

You heard it at a distance?—I first heard it, and afterwards I went towards it. I was going to Philipton.

Does Balfour lie in the way to Philipton?—There are two roads leading to Philipton; I went by the road leading by Balfour.

Did you see Botha that day?—I did; I saw him at the river called Macomo Hoek River. He was on foot.

[Chief Justice.]—Where are the people that were fighting there that day?—The people that were there are now still out on the hills as rebels.

Can you name any of them?—I don't know the names of the Ghonas well. If I see them I know them. Hendrik Neuka was one; that I know.

[Attorney-General.]—Do you know Jan Brander or Kiewet Brander?—Kiewet I know; but I am not sure that I know Jan Brander, unless I see him.

Did you see Kiewet that day?—Yes; he was there.

Was Botha armed?—Yes; I saw him standing shooting.

* Jan Hermanus, son and successor of the Hermanus killed at Fort Beaufort.

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[Chief Justice.]—Birds?—Firing at Englishmen and farmers. I did not see how often he discharged his gun, but he fired many shots.

[Attorney-General.]—Could you see the boers?—Yes; they were on the flats.

Were you on foot, or on horseback yourself?—On horseback.

Did you go on to Philipton before the firing had ceased, or after it was over?—Before the firing had ceased I went to Philipton. I think it was past 9 o'clock.

Did you see Botha again on that day?—Yes.

Where?—At Philipton.

Which side did he come from?—He came from Balfour side.

Had he anything with him?—Yes; he had a horse with him.

What colour?—Yellow.

Was he riding it?—He was leading it. He was riding another horse, his own horse.

Did you speak to him?—Yes, I said he had a fine horse, where did he get it. He said he got the horse from the farmers. He said nothing more.

Do you know Botha's son Stoffel?—Yes.

Where was he that day?—He resided in Philipton.

Do you know that there was anything the matter with one of his legs?—Yes, he was wounded when the fight was at Fort Beaufort.

[Chief Justice.]—How do you know that he was with Hermanus?—I heard it from his father.

[Attorney-General].—Where did you next see Botha?—An hour after I saw him and his son ride away.

[Chief Justice.]—Who had the yellow horse?—Stoffel Botha rode the yellow horse.

[Attorney-General.]—Where did they ride towards?—They left for Van Beulen's Hoek.

Had Botha before this day continued at Philipton?—Yes, he resided there before the fight at Balfour. I often went there, and saw him.

How long did you remain at Philipton yourself?—Saturday, Sunday, and Monday I remained, and left on the Tuesday.

On what day did the Balfour affair take place?—On the Saturday.

How came you to leave?—Cobus Fourie would not allow me to stay longer.

[Chief Justice.]—Why would he not let you remain?—I cannot say.

After you saw Botha and his son ride away, did you see him again at Philipton?—I saw him no more.

[Attorney-General.]—You and a number of other people were taken prisoners by Gen. Somerset, and taken to Fort Hare?—Yes.

Do you remember seeing Botha brought there as a prisoner?—Yes, he came there a week after us, as a prisoner.

Were the prisoners there kept together; did they sleep together?—Yes, altogether.

Did you hear Botha say anything there about this yellow horse and Balfour?—He spoke nothing to me of the horse, but he spoke of the fight; he said, if Gen. Somerset had not come, not one of the farmers would have escaped.

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What fight was he speaking of?—He spoke of the fight at Balfour; he also mentioned when they fought on another occasion when the General sent out his troops to the hills.

[Chief Justice.]—That is nothing, mentioning it; the papers mentioned it.—How came Botha to name this?—He said they surrounded the boers, and that the advanced guard had already retreated.

Did he say he had anything to do with it?—He said he had shot considerably at the farmers, and at the English; and I saw him do it.

[Attorney-General.]—Was any one there when he said this?—Yes, Hans Groepe, old and young Piet Bantam, Marthinus Groepe, son of the commandant.

Do you know whether a man of the name of Jansen was there?—Yes, there were about 90 in the tronk.

[Chief Justice.]—Was this said openly?—It was inside of the prison.

There was I suppose but one room?—We slept in two rooms, and by day we were in one.

[Attorney-General.]—Do you know that there was a Fingo patrol sent out to the hills at Lushington near Philipton by Gen. Somerset?—Yes.

Could all the people there see it?—Yes, I was a prisoner there, and I could see it.

Could you say if there was any firing in the distance?—Yes, the people in front fired on the Fingoes, and they were driven back.

At Fort Hare did Botha speak anything about this patrol?—Yes, he said the Fingoes would have got it nicely if they had just come up a little higher.

[Chief Justice.]—Did others hear this beside you?—Yes, many.

[Attorney-General.]—Did he speak of these things only once?—Several times.

Did he speak as if he had been there?—He said he had been with the rebels. I heard it from his own mouth. Several of the others spoke of what they had done.

You say you remember when the English went away from Fort Armstrong. Do you remember that any Fingoes came there after that?—Yes, in the morning.

How many Fingoes came?—Seven.

You were at the fort that morning?—Yes.

What was done to these Fingoes?—They were first asked where the post was (the letters). They would not answer, and they took away their horses and guns.

Can you say who took the horses away?—I took one, for my horse was gone; I had given my horse to one of the Fingo postriders; he came back without my horse, and I took the one he had. I went to Commandant Groepe, and told him that I would not keep it; but until I went to Fort Beaufort, to see if the Fingoes had stolen it or not.

Did you take a gun?—I don't know.

How were they handled?—They were rather ill-treated. The commandant said don't do so. He was not there in the beginning, but when the horses and guns were taken he came.

[Chief Justice.]—Who else was there with authority.—Botha was there.

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Was he the next in command if Groepe was not there?—Yes.

Had he said anything like Groepe?—All he said was in the Kafir language, and I could not understand it.

Was Botha friendly with these Fingoes?—I cannot say that he was unfriendly. I cannot say that he looked angrily at them.

Then he did not treat them as enemies?—No.

But he did not try to prevent them from being ill-treated?—Not that I heard of.

Were the things returned to them?—No.

What did you do with the horse?—I led it to a distance, and put it in the stable, and fed it. I then went close to the wagon where the Fingoes were sitting.

Did you see any of the Hottentots drive or force on these Fingoes?—That I did not see.

Then you do not know at all that the Hottentots were threatening to shoot them?—No.

You have heard this before to-day?—I did not hear it.

Do you mean to say that this is the first time you heard that the Fingoes were afraid, and that you were going to shoot them?—I did not hear it. I did not remain very long where the men were. I can't say what took place.

[Attorney-General.]—You remember three Fingoes coming there after the seven?—Yes.

Was Botha there that morning?—I did not see him.

Who spoke to the three Fingoes?—Willem Brass.

[Cross-examined by Mr. Watermeyer.]—Lotz, just call to mind the day of the seven Fingoes coming. They were Fingoes, or most of them, who had been living at Fort Armstrong before?—Yes.

You went down and seized a horse in security for one of your own which was gone?—Yes.

[Chief Justice.]—Can you say what the others took the horses for?—I cannot say.

[Mr. Watermeyer.]—You just took a public horse, and the other people took the others?—Yes.

You did that without Botha's orders?—I first asked Botha, and he said you may take the horse.

How is it that you did not say that before?—So many things happened that I can't remember everything. I asked Groepe also. I took the horse and went up to Groepe with it, and asked him.

You formerly said that you asked Groepe first, and now you say you asked him afterwards, which is the truth?—I asked Botha first and Groepe afterwards.

You remember three Fingoes coming?—Yes. I do not know that their horses were taken from them, but their guns were. Willem Brass took their guns away. I did not see Botha. The horses were standing there when I left.

Was Botha at Fort Armstrong that morning at all?—I cannot say that I saw him.

You have said you were quite sure that Botha was not there?—He was not where the Fingoes dismounted at the krantz. Whether he was below at the river, I cannot say.

You remember the fight at Balfour?—Yes.

You staid at Fort Armstrong until the flag of truce, which Groepe sent out, was sent back by General Somerset?—No.

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Was General Somerset's division in sight when you left?—No, they were not yet in sight.

Why did you leave Fort Armstrong?—Because Uithaalder said Sandilli was commander that day, and he would show the Bastards that day, and put them to rights.

[Chief Justice.]—Why did that send you away?—I was afraid of him.

Then you fled to Philipton to be in a place of safety?—Yes.

[Mr. Watermeyer.]—Were you on horseback or on foot?—On horseback.

You were at Philipton before 10 o'clock, and you were at Fort Armstrong at 9 o'clock?—I left before that.

[Chief Justice.]—Mr. Watermeyer, you know it is not competent to you to put false facts to the witness.

[Mr. Watermeyer.]—My lord, I will put no facts but such as I think I can prove. Now, Lotz, when did you leave Fort Armstrong?—The sun was not quite up, but, the fight delayed me, because I had to take the other road round.

Why did you not go the shorter and more direct way?—I was more afraid of Uithaalder's party than of the Kafirs, and therefore I took that road. They were fighting on the other side of the river, and on this side there is a lot of brushwood, along which I went, close to the river.

Do you swear that it was more safe to go round that way than by the other?—Yes; on the other road I saw the dust coming up, and I thought that was some of these people coming on. I have witnesses in two children who went with me.

[Chief Justice.]—Were they on foot?—No, they were also on horseback.

[Mr. Watermeyer.]—Did you also take them to the Balfour fight, in order to bring them in safety to Philipton?—We did not go near the fighting; we went by the road. I was on this side of the river, and the fighting was on the other.

What distance were you from when you saw Botha?—It is a little farther than from here to the tronk (about 400 yards), The farmers were higher up, and Botha was down below.

Then you could see that Botha fired?—Yes, I could see that he loaded and fired, and loaded and fired again.

What clothes had he on?—A long dark jacket and buff trowsers.

Did you see him at Philipton that day afterwards in the same dress?—Yes.

Was he firing on horseback or on foot?—The horse was standing on one side, and when they fired they went in front of the horses.

[Chief Justice.]—Then Botha was not alone?—No.

Were there many men assisting him to shoot?—Above there were many, but below him none.

How many were close by Botha?—About ten or twelve; I cannot say for certain.

Tell us their names?—I know only that Hendrik Neuka was one.

[Mr. Watermeyer.]—And at a distance further than the tronk you saw Botha with their horses between them and you; you saw Botha to recognize him?

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[Chief Justice.]—That is an observation and reasoning for the jury. I do not think it is proper to put such inferences to the witness.

[Mr. Watermeyer.]—I am compelled to do it, my lord, especially with a convict for life.

Did you, when you came to Philipton, tell any one that you had seen Botha in the fight?—No; for I saw many of the Philipton people also come from the fight.

Why did you not tell young Mr. Read there?—I did not tell Mr. Read.

You saw Mr. and Mrs. Read that morning?—I saw Mr. Read, not Mrs.

Well, why did you not tell Mr. Read?—I cannot tell. I saw so many people come in.

[Chief Justice.]—But you did not mistrust Mr. Read?—I do not know why I did not tell him.

[Mr. Watermeyer.]—Did you tell Groepe?—No.

Why not?—Because I saw most of the people at Philipton come in from the fight.

Were you the only loyal man?—That I cannot say this day; the clergymen I know were not against the government.

Why did you not tell it at Eland's Post?—I did not speak of it. They made me a prisoner when I went there on Wednesday morning.

Well, you say you told nobody at Eland's Post because they made you prisoner; why did you not tell it at Fort Hare?—Because we were all prisoners there.

I believe you said you never fought against the government?—No; I never fought against the government.

You say so?

[Chief Justice.]—He swears it.

[Mr. Watermeyer.]—No doubt he was found guilty by accident.

[Chief Justice.]—Now that is comment; it is not question.

[Mr. Watermeyer.]—Now, as you never did anything against the government, and you saw Botha firing, why did you not speak and say he had been firing?—How could I tell it to a single person when I was in prison? I have remained in prison from that day to this.

[Chief Justice.]—How came you to tell it at last at Bain's Kloof?—Mr. Bain asked me, and I told him the circumstances.

[Attorney-General.]—Young Mr. Bain?—Yes; and afterwards old Mr. Bain; but this is the first authority I could speak to.

[Mr. Watermeyer.]—On the morning that you went from Fort Armstrong did you send young Piet Bantam to turn Kafir cattle without the fort?—Others may have sent him, but I did not.

[Chief Justice.]—Did you say that he did go and turn cattle?—I did not say so.

[Mr. Watermeyer.]—Is not the ground bushy between where you stood at Balfour and the fight?—No, there is nothing that can prevent my seeing.

Can you describe the place where you stood?—Yes: on this side of Balfour is a school-house, and about twenty paces behind it I stood upon a small bank of stone.

How long did you stand there to watch the fight?—Not long, about half-an-hour.

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You said before that you were transported to Bain's Kloof for life?—Yes.

[Chief Justice.]—For high treason! There are some persons, you know, who glory in being convicts for high treason, —not that I feel with them.

[Attorney-General.]—Do you remember what the magistrate said to you before you gave your evidence?—Yes, he first asked me where were Uithaalder's hundred men.

You say you never fought against the Government?—No.

[Chief Justice.]—What are you going to prove?

[Attorney-General.]—I want to support the man's statement, by showing, what I am aware of from the record of the court-martial, which I have before me, that it was not for fighting against the Government that he was condemned, but for obeying a requisition of Uithaalder,—"Send me a hundred men or I will come and plunder you." In obedience to that, he sent twenty or four and twenty men. [To the witness.] This place near the school-house where you stood, was it on a level with Botha, or higher or lower than where Botha stood? —It was higher than where Botha stood.

After the people came back from Balfour to Philipton, there was great confusion in consequence of the expectation of Gen. Somerset?—Yes.

The Balfour fight was on the Saturday?—Yes.

Will you venture to swear that Botha was not on the Sunday, Monday, or Tuesday at Philipton?—I never saw him during those three days.

[Chief Justice.]—You mean the three days before you went to Eland's River, before you went into custody?—Yes.

You startle me. Why were the Philipton people frightened, when they were loyal, and on the Government side?—I heard them saying, "Let those who are on the Government side come out."

Why should there be confusion about Gen. Somerset's coming, when they were on the Government side?—The missionaries were on the part of Government, but not the other people.

Then there were rebels at Philipton?—Yes.

And the clergymen were not able to calm the people from these fears of Somerset?—That I cannot say.

If I follow this up I must go all over the transaction of the seven Fingoes.

[Attorney-General.]—The witness may be recalled.

[Chief Justice.]—This man certainly contradicts the three men with regard to Botha's interference. He says he saw no ill-treatment, and he heard no threat of the men being shot.

Piet Bantam called and examined.

[By the Attorney-General.]—I am a nephew of old Piet Bantam. I lived at Fort Armstrong before the rebellion. I know Andries Botha, the field-cornet of Buxton. I remember the day that Uithaalder came with his commando to Fort Armstrong. I left Fort Armstrong that morning before his arrival with my uncle and Andries Botha unarmed. I went to Blinkwater with my uncle to bring his oxen. Uithaalder's camp was at Blinkwater. My uncle had formerly belonged to Uithaalder's camp. He had left it to come to Fort Armstrong in consequence of Gen. Somerset's proclamation about

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the 10th of January, offering an amnesty which I think expired on the 23rd. He had come in, leaving his oxen behind him, and I went out to assist him to fetch them. Andries Botha did not say why he went out with us, and I did not ask him.

[Chief Justice.]—How did you know that Botha was going there?—That morning, when we went out we asked where he was going, and he said, he was also going to Blinkwater.

[Attorney-General.]—Buxton is in the Blinkwater?—No: in going to Fort Armstrong, you first go to Buxton, and then to Blinkwater.

Were there any loyalists at Buxton?—None; there were no people at Buxton then.

Where were the Buxton people?—They were all at Blinkwater with Uithaalder in the camp.

Well, you rode out of Fort Armstrong to go to the Blinkwater?—Yes.

What happened then?—We met the commando of Uithaalder coming to Fort Armstrong. Then Andries Botha asked Uithaalder where he was going to.

[Chief Justice.]—You heard him?—Yes.

[Attorney-General.]—Did you see Uithaalder and Botha meet?—Yes, they saluted and shook hands.

[Chief Justice.]—Did Uithaalder shake hands with your uncle?—Yes.

And with you?—Yes, with me also.

[Attorney-General.]—When Botha asked him where he was going to, what did he say?—He said he was coming to take Fort Armstrong, Uithaalder and Botha then went aside, and I did not hear what they spoke.

Can you say how long they spoke together before they came back?—About half-an-hour.

When Botha came back did he say anything to you and your uncle?—Yes, he said we were to return back.

Did you do so?—Yes.

Fast?—Yes, we rode hard; my horse knocked up.

Then Botha and your uncle got to Fort Armstrong before you?—Yes.

Was there a large commando with Uithaalder?—Yes.

[Attorney-General.]—Can you give us an idea of how many men?—As appeared to me, about 500 men.

How armed, generally?—With guns and assagais.

Did you get to Fort Armstrong before Uithaalder arrived?—Yes.

And you were there when he did come?—Yes.

Was Botha there when you came?—Yes, he was at Fort Armstrong.

You knew Hermanus Lotz?—Yes.

He was assistant field-cornet that day?—He was.

Did you hear him say anything to Botha about firing on the rebels?—Yes: I heard him ask the commandant, Groepe, what he must do; whether he was to fire or not.

Was Botha there?—Yes, he was there too.

[Chief Justice.]—Were you there by Lotz when he asked Groepe, in Botha's presence, whether he should fire or not?—Yes, I was.

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What did Groepe say?—Groepe said, wait a little. He said, "If the rebels won't listen and keep off, and will come on by force, then you are to fire; what are you to do else?"

[Attorney-General.]—Why did you not fire?—After Lotz had spoken to the commandant and turned round to a part of the people who stood higher up, Botha told him not to fire.

Tell us, as well as you can, what Botha said?—I heard Botha say to Lotz not to fire, and ask him whether he would spill his blood on account of the English. So Lotz told the people not to fire.

Was field-cornet Fourie present when Botha said, "Will you spill your blood for the English?"—No, I did not see him present.

You remember the English going away after that visit of Uithaalder's?—Yes.

Do you remember the day that the Winterberg commando, under Pringle, came down to Balfour?—Yes.

Were you at Balfour that day?—Yes.

What took you there?—I went in the morning to look for my horse, which I had left there the night before.

Had the firing already begun when you went out, or did it begin afterwards?—Yes.

Did you see Botha at Balfour that day?—Yes, I did.

Where were you, and where was he, when you first saw him?—I was close to the river.

Where did Botha stand?—He passed me on the road leading towards the drift.

How far were you off?—About fifty paces.

Are you sure that it was the man?—I am sure it was he.

Was he on foot or on horseback?—On horseback,

Armed or unarmed?—He was armed.

What arms did he wear?—He had his gun and his bandelier.

Did you see the direction in which Botha rode?—Yes, he rode straight to the drift, and up to the place where the farmers were fighting on the flats.

Could you see where the farmers were fighting?—Yes.

Could you see the people who were firing at them?—No, the boers were on the hill, and those who were shooting at them were down below.

Could you see that Botha went into that hollow?—Yes.

Did you see him shoot?—No, I could not see them, for they were in the hollow; all I could see was the smoke rising.

[Chief Justice.]—Then you did not see Botha firing?—No; but he was there where firing was going on.

[Attorney-General.]—What kind of a horse had Botha?—A brown horse.

Was there much firing?—Yes, a great deal.

How long did you remain?—I stood until the fight was nearly over

How long did it last?—I was detained there about three hours. I stopped there until I found my horse.

Did you see Botha again that day?—I did.

Describe how he was; had he anything with him?—He was leading a yellow horse and riding a brown one.

Was he riding fast or slow?—Slow.

On what road?—On the road to Philipton.

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When you saw him coming back with the yellow horse, were there other people with him?—Yes, there were more people with him.

Did they continue with him on towards Philipton, or did they turn off?—I saw them go the lower road and he went the straight road. There is a foot path and a wagon road, and he went the foot path and they the wagon road.

You were afterwards made a prisoner in Fort Armstrong I think?—Yes.

Was that the day the fort was taken by Col. Somerset?—Yes.

And you were taken round with the army to Fort Hare?—Yes, I went to Lushington and then to Fort Hare with the troops.

Was Botha a prisoner in Fort Hare?—Yes, he was brought in some days after me.

Did the prisoners talk much there about the war?—Yes.

Did you hear Botha say anything about his business?—Yes.

State as well as you can what he stated?—I heard Botha say, with his own mouth, that he was at Balfour that morning, and that he had won a horse from the farmers. He did not say from whom. Hermanus Lotz, Hans Groepe, Cobus Vanbeulen, and Martinus Groepe heard this as well as me; also Andries Jansen. He also told us of the fight between the rebels and the Fingoes patrol in the mountains at Lushington. He said it was a great fight, and that many of the Fingoes had been hurt that day.

Try to say the very words that Botha spoke?—He said, "*Ik was daar in die baklye met de rebel Hottentots en de Fingoes zaam, en ons het ter deege de Fingoes daar geschiet; had de Fingoes niet gevlugt, weinig van hulle zal uitgekome hebbe.*"

[Attorney-General.]—Do you recollect if Botha spoke of that once or more than once?—I heard him only that day speak of that. He spoke of the Lushington fight and the Balfour fight on that day.

Now go back to Fort Armstrong; were you there when seven Fingoes came one morning, and had their horses and guns taken from them?—Yes.

Who took them?—Hermanus Lotz, Morris Esau, and Willem Esau.

Did you see Andries Botha there that day?—Yes.

Did you hear him say anything or do anything?—He was not at the spot where the horses were taken, but he stood a little way off, about 25 paces. I did not hear what he said.

You heard of three Fingoes on another morning coming there?—I was not there when they came in, but I came there after they had come.

Did you see Botha?—I saw Botha that morning at Fort Armstrong. I cannot say for certain how late, but the sun had risen a little way. I think it was about 8 o'clock.

[By Mr. Watermeyer.]—You say you went out to seek for your horse on the day of the Balfour fight. Was that the only reason you had for going out from Fort Armstrong that morning?—Yes.

Was not the real reason that you had been sent out with Hermanus Lotz and others to turn some Kafir cattle that were coming near the Fort?—Hermanus Lotz said that morning

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that they were to go out and turn back the cattle which the Kafirs had driven from the krantz, and I went with those people, at the same time, to look for my horse, because I was afraid to go by myself.

Then you did not go out only to look for your horse, but you went out to go after the cattle?—I did not go purposely for the cattle, but I took the opportunity of going with them for my horse.

You know, when you were tried at Fort Hare you did not say at all that you went to look for the horse, but that you went out with a party to turn cattle?—Yes, I said that; I did not say anything about my horse.

Why not?—I did not think it was necessary, for the Colonel who tried us there did not want us to speak much.

[Chief Justice.]—Where were you wounded?—I was wounded in returning from Balfour; between Armstrong and Balfour.

On the same day?—Yes.

But you got your horse?—Yes.

You don't mean to say that you were wounded on the public path?—No; in the hollow among the bushes, in the thorns, at the side of the road.

Then you were accidentally wounded?—I don't know whether it was accidentally or purposely.

Shot by some of Uithaalder's men?—I cannot say whether it was Uithaalder's people or the boers, because they were all mixed up.

[Mr. Watermeyer.]—Now, in your defence on the court-martial I think you said that you never got as far as Balfour at all?—My defence was, that I had not come as far as where the fight was.

[Chief Justice.]—How many of the jury will give a grain of weight to what this man says in his defence? You do not think he is going to convict himself. A man put at the bar says he is not guilty, but he does not expect you to believe him.

[Mr. Watermeyer.]—On your defence you called a witness to prove that you were but a little way from Fort Armstrong?—I called the witness to prove where I was wounded.

[Chief Justice.]—What does it matter if he says he was not there?

[Mr. Watermeyer.]—How was Botha dressed?—Botha's trowsers appeared to be of buff moleskin; his jacket was black, and he had a hat.

Did you see Botha that day after the fight?—Yes, when he returned from the fight?—He had a yellow horse.

You told nobody at Bain's Kloof that you saw Botha fighting?—Yes, I told the superintendent.

[Chief Justice.]—Had you never spoken to anybody before about it?—I never told it to any body before.

How soon were you taken prisoner after you were wounded?—Shortly after, when the General came in.

Did the General take any prisoners at Philipton?

[Attorney-General.]—Yes; but he did not go there for some days. This man was taken prisoner on the Saturday, and the Philipton people were taken prisoners on the Tuesday.

[Adjourned.]

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FRIDAY, 14TH MAY, 1852.

AREND APRIL, a Hottentot, examined.

[By the Attorney-General.]—I was tried by a court martial as a rebel, and am now living at Bain's Kloof, as a convict for life. I lived before the rebellion at Winterberg with Mr. Barend. I knew Andries Botha, the field-cornet of Upper Blinkwater, long before the war. I was at Uithaalder's camp at the Blinkwater about two months, and from that I went to Fort Armstrong. While I was at Uithaalder's camp I saw Botha there; I think four or five times. I remember on one occasion old Mr. Read, young Mr. Read, and Mr. Van Rooyen, coming to the camp to read a proclamation. Andries Botha was with them. The proclamation was, that we were not to make war against the government. All the camp people were there assembled, and young Mr. Read read the proclamation, and spoke long to the people. Botha was present, and Uithaalder, and all the camp. After the meeting broke up, I saw Botha speaking to Uithaalder. I heard what they said. The Messrs. Read and Van Rooyen were still there, but they were not together. They were not near enough to hear what Botha and Uithaalder spoke. Uithaalder asked Botha what should he do? He said "I am ready to attack Fort Beaufort." Botha said, "I will give you people." Uithaalder then went to Fort Beaufort.

[Attorney-General.]—The same day?—No, afterwards.

But was anything more said by Botha and Uithaalder?—Nothing more that I remember.

Was this conversation heard by any one else?—Yes, it was; his name is Karel Kauter. He is now with the rebels.

Did Botha go away with Mr. Read?——

Mr. Watermeyer objected, that if any thing of this was evidence, it ought to be evidence on another count. This might be preliminary evidence to the third count, but the Attorney-General had said he left the third count, and he was not entitled to prejudice the prisoner on the fourth count by means of evidence which, if applied at all, could only apply to the third.

The Chief Justice said, every count concluded with the words "and other traitorous acts," and although that was not a specific charge, yet it was competent to call evidence in support of it under either count.

Mr. Watermeyer contended that under these general words it was not competent to prove what ought to be a separate charge. The act, whatever it might be, which his learned friend attempted to prove was of the nature of the third count, and if it could be proved, ought to be proved under the third count; or should have been charged specifically as a seventh count; and it would doubtless have been so charged if his learned friend had been aware of this Bain's Kloof evidence, which it was not fair to bring forward by surprise. He contended that no traitorous act could be put in evidence, under the fourth count for the purpose of proving what was laid under the third.

The Chief Justice said, he could not restrict the Attorney-General from calling evidence to prove the words of the fourth count, "maliciously, wickedly, and traitorously." This was to

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reflect the word traitorously. How did the court know that it did not make for the prisoner, that he went with friends who are known to be friendly to the government for a certain purpose to the camp. If he then stated something upon his own credibility, it might be shown to be of a nature to weigh in his favour.—His lordship took a note of the objection, and asked,—Are you sure that you have told us all that took place between Uithaalder and Botha?—Yes, all that I heard I have told.

Were they talking longer than you heard what they were talking about?—Yes; when I left they were still standing talking.

What made you go away?—I went to my house.

Do you mean to say that you were not curious to hear all that took place?—No, I did not listen any further. I went home.

[Attorney-General.]—Was this the first time you saw Botha in the camp, or had he been there before?—He had been there before.

On more than one occasion?—Yes, he came there with gentlemen.

Old Mr. Read was with him sometimes?—Yes.

[Chief Justice.]—Was old Mr. Read always with him?—Young Mr. Read was always with him, but once I saw the old gentleman.

Do you mean that you never saw Botha there before, that time, but young Mr. Read was with him?—The missionaries were always with him.

Are you alluding to Botha's coming there before or after the rebellion.

[Attorney-General.]—My lord, the camp was only made after the rebellion. It was formed by the rebels.

[Chief Justice.]—I did not know that. I thought the place might have been previously visited by the missionaries for the purpose of holding service. (To the witness). Did you see Botha there after that time that you spoke of?—I did not.

Were you in Fort Armstrong the day Uithaalder's commando came?—No, I was not there.

[Attorney-General.]—Were you at Uithaalder's camp when that commando went to Fort Armstrong?—I was still in the camp.

Did you go with that commando?—No, I did not.

What number of men went with Uithaalder?—About 500 men.

[Chief Justice.]—And you remained in the camp?—Yes I did.

[Attorney-General.]—Do you remember the day when Fort Armstrong was attacked by Gen. Somerset?—I do.

Where were you living then?—At Balfour.

Before that day where were you living?—At Fort Armstrong.

How long had you lived there?—About a week.

Who were you living with, or were you living alone?—I lived with my parents.

Did they live there before?—No, they came from the Blinkwater to live there.

Was your father in the rebellion?—No, my father is in service with the farmers.

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Do you remember that the farmers came down that morning upon Fort Armstrong?—Yes.

Did you see them come down?—No, they came down before daylight.

But you saw them during the fight?—Yes.

During the fighting, did you see Andries Botha?—Yes, I saw him there.

When you saw him where were you?—I was on the road with my goats.

Where was he when you first saw him?—He was coming from the direction of Philipton.

Was he on foot or on horseback?—On horseback.

Armed or unarmed?—He was armed with a gun.

What did you see of him?—I saw him go over to where fighting was, and fight against the farmers.

What do you mean by fighting?—He fired.

Was he by himself or did he go by the others who were shooting?—He was with the others.

The others shot at the farmers?—Yes.

Did he keep in one place, or was he moving about?—He remained in the kloof.

[Attorney-General.]—How were the farmers with respect to those firing at them?—The farmers were the highest, and they were in the hollow.

Are you sure it was the man Andries Botha who was riding there?—I am sure it was.

[Chief Justice.]—This was after the proclamation?

[Attorney-General.]—Oh yes, my lord.

[Chief Justice.]—How far did you stand from where he was?—About 700 paces, as I step.

[Attorney-General.]—Did you see how he was dressed?—He had buff moleskin trousers, a long black hip-jacket, and a drab hat on his head.

[Chief Justice.]—When you saw him come from the direction of Philipton was he alone, or were there more people with him?—I think there were about twenty.

[Attorney-General.]—Do you mean that he was 700 paces from you when he passed you going to the fight?—No, he was then as far from me as from here to the street (about 50 yards).

[Chief Justice.]—Then he was nearer to you than when he was in the hollow?—Yes.

Now, if you had not seen him pass you towards the hollow, would you have known him in the hollow?—Yes, I would have known him.

Then you could plainly discern that it was Botha at 700 paces distance?—Yes I could, for I was sitting on a rising ground.

Do you know any of the twenty men?—Yes, I know one, young Cobus Fourie.

Do you know more?—No.

Did they ride fast past you, or slowly?—They were riding slowly.

[Attorney-General.]—Was the firing going on where the boers were when they rode past you?—Yes, they were busy firing.

[Chief Justice.]—Had you heard much firing before this party passed you?—Yes.

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Was there a large field of those who were firing at the boers?—Yes, there were a great many of Uithaalder's people.

[Attorney-General.]—Do you know if Uithaalder was there?—I saw him.

More than once?—Yes.

How many times?—I saw him several times; he rode backwards and forwards on his horse.

Did he go to the place where Botha was?—No, he did not go there.

How long did Botha stay that you saw him?—About four hours.

Did you see him for four hours?—Yes.

[Attorney-General.]—Did you see him return?—Yes.

Did you see how he came?—With a yellow-horse.

Leading it or riding it, or how?—He held it and rode a brown horse.

Was it a naked horse?—No, there was a new saddle and bridle on it.

Was he alone?—No, more people turned back with him.

In what direction did they ride?—In the direction of Philipton.

[Chief Justice.]—Were there as many men returned with him as went with him?—No, I think six returned with him.

[Attorney-General.]—Was the firing over when he returned with the yellow horse?—No, there were some people still firing.

[Chief Justice.]—One would think they must have been out of ammunition. One man could not carry sufficient to last that time, or they must only have fired one round in half an hour!

[Attorney-General.]—There was firing, my lord, for more than four hours on the occasion. They manage to make very protracted affairs of that kind.

[Chief Justice.]—Did you still remain there?—No, when Botha passed I went away. I went to Fort Armstrong, to the General.

What were you doing there?—I was with my cattle.

[Attorney-General.]—Were you armed that day?—No.

When you left what time was it?—(The witness pointed to the direction of the sun, about 11 o'clock.)

[Attorney-General.]—Was the General in Fort Armstrong when you went in?—Yes, he had just come in.

Do you mean that he had crossed the river?—The General was on the other side of the river, but Charles Somerset was already over.

[Chief Justice.]—Did you take your cattle with you?—No, I lost my cattle.

[Attorney-General.]—Were you taken prisoner then at Fort Armstrong?—Not that day, but the next day.

And sent to Lushington, and from Lushington to Fort Hare?—Yes.

Do you remember that Botha was also brought there a prisoner?—Yes.

How long had you been a prisoner when he was brought there?—When he was brought there I was in the levy. We had tents allotted to us outside.

[Chief Justice.]—Were you at one time put in the tronk?—Yes, the settlers pulled me out to bring me to the fort.

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[Attorney-General.]—I do not understand the witness. Were you made a prisoner?—Yes.

Were you taken to Lushington, and then to Fort Hare?—Yes, but we were let loose.

By whom?—By Sir Harry Smith.

How came you into the tronk?—Because they said they saw me present when Uithaalder took three Englishmen.

Who said this?—The Englishmen there.

Then you were taken and put a second time in the tronk?—Yes.

And then you saw Botha there?—Yes, then he was there.

Were all the prisoners present together in one room?—Yes.

Did you then hear Andries Botha say anything of himself, and of what he did?—I did.

[Chief Justice.]—What was it?—He said one morning how he had been firing at the farmers, and if the General had not come up, they would have had it well.

Had he spoken of the place where this occurred; did he say where it was?—He said on the other side of Macomo's Kloof.

Is that near Balfour?—Yes, it is in Balfour; the kloof comes down that way, and there is Balfour.

Did you know from what he said that he was speaking of the fight at Balfour?—Yes.

Did he speak loud, so that any one could hear him as well as you?—Yes, he sat down with us telling of it; not so very loud, but the way that men speak.

Name some of the men who were present?—I don't recollect them all. There was Piet Bantam, Marthinus Groepe, Cobus Van Beulen, Andries Jansen, and many others.

Three men in convict dresses were here brought in and identified by the witness; namely, Marthinus Groepe, Cobus van Beulen, and Andries Jansen.

The Chief Justice said he grieved to see such men in such a dress.

[Attorney-General.]—You have been in town about a fortnight?—Yes.

When you came from Bain's Kloof the three men now here were left there?—Yes.

Have you seen them since?—No.

[Attorney-General.]—They have been separated by my instructions, and have not had the slightest communication with any man living but myself. On Wednesday evening, after the rising of the court, I did not go to Mr. Brink's funeral, but went down to the tronk, and asked them a few questions.

The men were then removed.

[Cross-examined by Mr. Watermeyer.]—That morning, did you drive your goats from Fort Armstrong or out of Balfour?—No, they were in Balfour, for the lager was very large.

Then you were in the rebel camp, and not in Fort Armstrong that morning?—I was in Uithaalder's camp.

Do you know Klaas Plaatjes and Jan Anderson?—Yes.

When you were tried before the court-martial you were examined as a witness on their behalf?—Yes.

You swore that they were not at the attack on Post Retief?—They were not there.

You swore that they were with you in the Blinkwater?—Yes.

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But notwithstanding that, the court-martial condemned them to death for having been at Post Retief?—Yes.

[Chief Justice.]—I cannot take this as evidence. He cannot know that they were convicted, and if they were, the court-martial may have been quite wrong.

[Mr. Watermeyer.]—He appeared to prove an *alibi*, but yet they were found guilty.

[Chief Justice.]—Where were these two men?—They were at Blinkwater.

[Mr. Watermeyer.]—You know Bartman, Groenberg, and the two Smiths?—Yes.

You were called as a witness by all those four men, and swore that they were not at the attack on Smith's place?—No, they were at the Blinkwater.

Well, these four men were found guilty of the fact?

[Chief Justice.]—I cannot take this as evidence. It goes to convict this man of perjury, and therefore I must have the legal evidence negativing his oath. But the Attorney-General may admit the convictions.

[Attorney-General.]—This man was brought forward by the prisoners, and asked by each of them, "Was I that day at Post Retief?"—"No," he replied, "because you were then a rebel at the rebel camp at Blinkwater." The court-martial might not have thought that a justification.

[Chief Justice.]—It is not because the court-martial formed their own opinion that this court is to receive imperfect evidence. It may be matter for observation for the jury, but I cannot take it for granted that these men were convicted for being at the attack on Smith's place.

[Mr. Watermeyer.]—It will be admitted that they were convicted by the court martial.

[Attorney-General.]—Yes.

[Mr. Watermeyer.]—And upon this charge?

[Attorney-General.]—They were charged generally with levying war at the Winterberg.

[Mr. Watermeyer.]—When the time comes, I may observe on the cases of each of these four men. [To the witness.]—You could describe Botha's dress; can you describe the dresses of all the other men who were with him?—No, that I could not do.

[Chief Justice.]—How came you to look particularly at Botha?—I took notice of him because he was a peaceful man.

You said that young Cobus Fourie was there; can you tell how he was dressed?—He had striped trowsers on, and a short black jacket and a drab hat.

[Mr. Watermeyer.]—You say you were in prison until the settlers came to take you out, and then you were in the levy?—Yes.

You know that the authorities were trying to find out who had been at Balfour?—No, I did not know that.

[Chief Justice.]—Who was the officer of your levy?—Cumming.

After you had been brought to Fort Hare as a prisoner, were you actually put into a levy?—Yes.

I did not know that. Was it the Alice levy?—No, Cumming's levy.

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How is it that you did not tell your officer, or any one else, that Botha was in the fight at Balfour?—Nobody asked me about it.

[Mr. Watermeyer.]—You told nobody, although you were surprised to see him at the fight because he was a man of peace?—No, I did not tell anybody.

[Chief Justice.]—At what distance were the boers from the hollow where Botha was firing?—It might have been about 600 yards.

I suppose you have seen Mr. Read, jun., speaking with Uithaalder when he came to the camp?—Yes, he spoke to him much.

And frequently?—Yes, frequently.

Now you are not asked about what he said, but about what you have stated that you overheard Botha say to Uithaalder. You know you swore before the court-martial, and they said they did not believe your oath. You have that upon your conscience. Now you must not swear unless you are certain. Will you swear you heard—when Uithaalder said he was ready to attack Fort Beaufort—Botha say to Uithaalder, "I will send you men." I swear that.

You may go.

HANS GROEPE called and examined.

By the Attorney-General.]—I am a brother of commandant Groepe. At the time the rebellion broke out, I was living at Kat River with Marthinus Appel, about half an hour on foot from Fort Armstrong. I know Andries Botha the field-cornet. After the rebellion broke out, Appel and I went to Fort Armstrong. Botha was then living on his place at Buxton. He came now and then to Fort Armstrong and slept at the commandant's. I remember the day when Uithaalder came to Fort Armstrong with his commando. I cannot say whether before that Botha came there frequently or not. As I am a herdsman I did not see always who was there. He was at Fort Armstrong the day that Uithaalder came. I was there myself. I went out that day with the cattle, but when we were in the field, Commandant Groepe sent to us, herdsmen, to come in, because the rebel force was coming on; and I got in to Fort Armstrong just as the rebels dismounted on the other side. I saw Botha there. He went with some others to have a parley with Uithaalder. After they came back I saw some of the rebels in the fort, and some stopped below. It appeared to me that about fifteen came into the fort. I know Hermanus Lotz, assistant field-cornet. I heard him ask Botha if he should shoot, and Botha said, "Will you spill your blood for the English blood?" And Lotz asked, "What are we to do?" and Botha replied, "I don't know what you are to do." I then went to Marthinus Appel, the provisional field-cornet of my field-cornetcy. When the fifteen men came into the fort, somebody said, "Stop, don't come in." I don't recollect who it was, but they came in and dismounted. They stood talking, but I was at some distance. They then turned and went out again. I was up in the fort, and did not see what happened at Macmaster's stable. I remember the day Gen. Somerset came to Fort Armstrong. I was then in the fort; but when the General began to fire the cannon I ran off. When Jan Groepe and Marthinus Appel were sent out with the flag of truce, I

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stood about 100 yards off on the hill, looking at the firing. Jephta, July, and some other men were with me. I do not know any man who fought at Balfour that day. I could not recognize any person. I only saw the smoke and heard the guns. I was taken prisoner on the next Wednesday after Fort Armstrong was stormed. The fort was stormed on Saturday, and on Wednesday I gave myself up at Eland's River. I was then taken to Fort Hare, and put in prison. About the same time, Lodewyk Peffer brought Andries Botha to Fort Hare. We were there confined in the same apartment with the other prisoners. Something was said there by Botha about what he had been doing. He said if the General had not come the English would have had it well that morning at Balfour. He also said when the General was encamped at Lushington, he had sent out the Fingoes into the mountains, and he said, "I was present at the fight, and we had the Fingoes terribly under the bullet that day." He said this at the same time that he mentioned the Balfour fight. He said nothing more. I will speak the truth: that was all he said.

[Chief Justice.]—How came Botha to speak of these things?—I don't know; no one asked him for it.

Did the others say anything about it?—Botha told this without anybody talking to him about it.

[Attorney-General.]—Can you say whether he spoke of these things only one day, or more?—I only heard him speak once of it.

Can you say who were there engaged in the conversation besides yourself?—Yes, but I do not know whether they heard it. There were Hermanus Lotz, Piet Bantam, and Marthinus Groepe; but I do not know if they were paying attention.

How large was the cell?—It was large; fifty men slept in it.

[Mr. Watermeyer.]—On the morning that Uithaalder came and threatened to attack Fort Armstrong, did you remain in the fort?—Yes; I did not go through to the other side.

How is it that when Mr. James Read and Jan Fourie rode there that day, they saw you a mile from the fort, under a tree?—After they said they would not fight that day, we went out with the cattle, and Mr. Read and Fourie passed us.

[Chief Justice.]—Then, in fact, you did not remain in the fort all day?—Before Uithaalder arrived I had been out with the cattle; and when the rebels were advancing, Commandant Groepe sent his son to call us in.

[Mr. Watermeyer.]—Do you remember Mr. James Read asking you what you were doing lying under a tree, instead of being ready to do your duty at the fort?—Yes, Mr Read said, Come nearer with the cattle, and if the rebels advance, come on this side of the drift, and fire upon them if they fire upon you.

[Chief Justice.]—Did you lie or stand?—I stood under a tree.

[Mr. Watermeyer.]—Do you recollect Mr. Read saying that your daughter had complained that a couple of days before you had been in communication with Uithaalder, that you were on the side of the rebellion, and that you would shoot her husband if he did not join you?—No, that was a case that was before Mr. Wienand about my daughter.

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Did Mr. Read not speak to you then about that charge?—No.

[Chief Justice.]—I have not taken this. It is too remote. You may as well ask him about something that occurred a month ago. It could only show that there was a complaint by the woman, which he denied, and that Mr. Read believed her, and charged him with it; but what has that to do with the charge against Botha.

[Mr. Watermeyer.]—My sole reason for putting the question is this, that this man makes out that on the morning of the 22nd January, he and Hermanus Lotz, and others, were very loyally inclined, and would have fired on Uithaalder's people, but for the advice of Botha not to fire. Then I ask him whether—being not where loyal subjects ought to be, at that time, but at some distance from the fort—Mr. Read did not tell him that he ought to be in a position where he could be of service.

[Chief Justice.]—I can very well understand Mr. Read's motive in saying, "Why are you lying under a tree when you should be under the walls of the fort, where you are wanted;" but that has nothing to do with Botha's case; nor is it a matter that will affect this man's credibility. The man is a rebel convict, and there he is,—you cannot alter the fact. (To the witness.) At the time that you heard Lotz ask Botha whether he was to fire, had you your gun with you?—I had my gun.

Were there other people there who had their guns ready to shoot if you had been told?—Yes.

Had you your guns all ready then under the tree?—Yes, we had our guns with us.

What ammunition had you about you?—I had powder in my horn and ball with me.

And had the other people powder and ball?—Yes.

And if Botha had said to you, you were to fire, would you have fired?—I would have fired, and then I would not be here to day.

[Mr. Watermeyer.]—I do not object to this, but the Commandant was Groepe, and the order should have come from him. Some might consider it desirable to fire and others not.

[Chief Justice.]—Would you have fired if Commandant Groepe had told you?—Yes, we would have fired.

Do you know where Commandant Groepe was at the time when Lotz was speaking to Botha?—No, I cannot say whether he was at that moment in the Fort.

Had you seen him that day?—Before I had left with my cattle I saw him.

When you were under the tree, did you think that anything would be done to the fort by the rebels that day?—No.

When did you join Uithaalder?

[Attorney-General.]—The fact is, he was one of the men that Lotz, under a threat of plunder, sent to Uithaalder.

[Chief Justice.]—Did you go over to Uithaalder?—Yes, when Lotz commanded me.

I quite feel the reason why Mr. Watermeyer would have gone into this; but Lotz is the man who spoke to Botha. The spokesman is Lotz, and this man does not pretend to be over anxious and prepared to fire. I do not say that it was

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not merciful in Botha. He might have thought that, as it turned out, the rebels would go away without firing. It may yet be shown that he acted upon the best principle and the best policy; but I do not see that the conduct of this man affects the case as against Botha. He is proved to have been a man of influence, and to have used his influence with effect; and I cannot yet say whether it may not be in his favour that he was wishing to put off resistance as long as possible.

HANS FISTER called and examined.

[By the Attorney-General.]—I remember the fight at Balfour between the rebels and the boers. I was there, and fought under Uithaalder. Uithaalder's camp was then below the krantz (Fort Armstrong). The krantz place is on the other side of the river, and our place was on this side, not far from Philipton; not half an hour. Uithaalder's people went from the camp that morning to fight. They went through the river, and from there they turned down to Balfour. When I got there nearly the half of Uithaalder's people were already fighting. They fought in clumps, they were spread; some fought in one place and some in another. The clump where I was consisted of about twenty. We afterwards separated, and half went to one clump and half to another. It was about 8 o'clock when we got there. I know Andries Botha. I did not see him that day in the fight. I did not see any of the Philipton people that I knew in the fight that day. Uithaalder's people got the worst of it; they were beaten. Part of them went to Van Beulen's Hoek and part to the Blinkwater. I went with those that took flight towards Buxton. That was the same day. We left again at night-time, and slept at Balfour; and the next day we went to Van Beulen's Hoek, where the other party had gone. We joined them about 3 o'clock in the afternoon. I know Stoffel Botha, Andries Botha's son. He was wounded in the foot at Fort Beaufort. I saw him there at Van Beulen's Hoek. Andries Botha, the old man now present, was also there. He was there with his son, and gave him a yellow horse. The horse was saddled and bridled. When I first saw it, it was knee-haltered, with the saddle off. Andries Botha remained there for about an hour after I arrived. His son went with us that night, and rode the yellow horse. I saw Andries Botha go away on foot. Uithaalder's people went from Van Beulen's Hoek to Eland's River. I am sure that I saw Andries Botha give that horse to his son. I was examined at Graham's Town in the presence of Andries Botha. I do not not remember that he asked me any questions. There were no cattle belonging to the Philipton people there that day. There were only the cattle there that the rebels brought out of the krantz. I saw no stray cattle. If there had been other cattle in the camp I must have seen them, for I was in the fight. The rebels had about 300 cattle, which they had brought from Fort Armstrong. When they saw the General advance they drove the cattle off. As far as I know there were no stray cattle among them.

[Cross-examined by Mr. Watermeyer.]—How many fights were you in?—I was at Fort Beaufort when Fort Beaufort was attacked, and I was also at Winterberg, and at Koonap River, and above Winterberg, in the Hoek, and at Balfour.

And you expect to be pardoned now?—I don't know.

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[Chief Justice.]—Did any one make you any promise of pardon?—No.

[Mr. Watermeyer.]—Do you expect to be tried for having been among the rebels?—Yes,

[Chief Justice.]—What do you mean?

[Mr. Watermeyer.]—This is Queen's evidence, my lord. In fact the man is entitled to his pardon.

[Attorney-General.]—This man has not been tried.

[Mr. Watermeyer.]—No, he must be pardoned!

[Chief Justice.]—Whom did you tell of this? To whom did you give the first information?—To Mr. Stringfellow. At Fort Beaufort I surrendered myself.

When was that?—About six months ago.

Have you been in custody ever since?—Yes.

You mean, as soon as you came in you told Mr. Stringfellow, or after you were in prison?—I arrived on Saturday; on Sunday I remained in prison, and on Monday I went to Mr. Stringfellow.

Had you told anybody before that that you wished to make confession?—I told the gaoler.

Mr. Stringfellow had made you no promise?—No.

Nor anybody else?—No.

You have never had any quarrel with Andries Botha?—No.

And you never had any cause of ill-will against him?—No.

Did you tell Mr. Stringfellow only about Botha?—I told Mr. Stringfellow other things.

I suppose you told Mr. Stringfellow all that you told us to-day?—Yes.

You told him of all these fights that you had been in?—Yes.

Did Mr. Stringfellow give up the name of Botha, or did you?—Of my own accord I spoke.

Did you speak of any other people that you had seen in the fights?—No.

But what you told of Botha you told of yourself?—Yes.

And are you sure you have told us everything you told the magistrate?—Yes.

Are you sure that you have not taken the son for the father as Botha suggested before the magistrate?—I am.

The Attorney-General here said, that as his learned friend objected to the evidence he now proposed to bring forward he requested that the jury should now retire for a short time, while the point was being argued, in order that they should not be influenced by a matter that might not ultimately come before them.

The jury were accordingly ordered to retire.

The Attorney-General said, on the deposition of this witness being taken by the magistrate, he was cross-examined by the prisoner, who in the course of that cross-examination made a declaration, voluntarily admitting that he was present that day at Van Beulen's Hoek, in search of cattle which he had lost. He, the Attorney-General, proposed to put Mr. Cyrus into the box to prove this declaration, he having acted as translator on the occasion.

The Chief Justice said, he could conceive no objection; but he would hear what Mr. Watermeyer had to say.

Mr. Watermeyer contended that, under the 28th section of ordinance 72, the proposed evidence was inadmissible. That sec-

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tion enacted and declared, "That any confession of the commission of any crime or offence which shall be proved by competent evidence to have been made by any person accused of such crime or offence, whether before or after his apprehension, whether on a judicial examination or after commitment, and whether reduced into writing or not, shall in any case be admissible evidence against such person. *Provided always*, that such canfession shall be proved to have been freely and voluntarily made by such person in his mind and sober senses; and provided also, that when such confession shall have been made on a judicial examination before any magistrate, on any criminal charge, such person shall, previously, according to law, have been cautioned by the said magistrate, that he is not obliged, in answer to the charge against him, to make any statement which may criminate himself, and that what he shall then say may be used in evidence against him." This was a statement which it was proposed to bring forward against the prisoner, in order to criminate him in some degree, and it was necessary, that the caution here spoken of should be given by the magistrate, that what he then said might be used in evidence against him. But no such caution had been given.

[Chief Justice.]—Do you mean to contend that the prisoner is not to open his mouth before the magistrate without a caution! This is not the declaration meant by the ordinance, and the section does not apply. It refers to the formal declaration at the conclusion of the evidence, but this was during the examination. It is perfectly clear that the objection is not tenable, and does not arise.

Objection was overruled, and the jury recalled,

The Attorney-General then called Mr. George Cyrus.

Mr. Watermeyer said he must now take the objection to this witness which he had already taken with respect to another, namely, that this was a witness of whom he had received no notice.

The Chief Justice said he would take a note of the objection, but he was so strongly impressed that it was no valid objection that he was in doubt whether he should reserve the point. It was a monstrous proposition that all that belonged to evidence of a similar crime in England was requisite here. The objection was that this man was not on the list of witnesses.

The Attorney-General said, there was no list of witnesses whatever. His learned friend had not a leg to stand upon. There were four witnesses to whom the matter applied. One of them was Mr. Edward Bell, of whose deposition the other side now said they had no copy, although every document had been open to them, and they had taken copies of the others. But he should withdraw the witness for the present, and hereafter open the point, and argue it if necessary.

Jacob Nieuwveld, a Hottentot, called.

(The Attorney-General explained that the witness stuttered miserably, and would require great patience.) He then asked, —Do you remember the rebels taking Fort Beaufort?—Yes?

You were then at the rebel camp near Philipton?—Yes.

Who was the Hottentot commandant of that camp?—Uithaalder.

Were there Kafirs there as well as Hottentots?—Kafirs also.

Who was the chief of the Kafirs?—Macomo.

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Do you know Botha?—(The witness pointed out the prisoner.)

Did you ever see Botha at that camp?—Yes.

Was that before or after Fort Beaufort was attacked?—Before.

How long before?—Not long.

A week, or a month?—A month.

Did he come alone, or with other men?—He came alone.

On foot or on horseback?—On horseback.

Was he armed or not?—He had a gun with him.

Do you know whether anybody ate there that day?—Who?

Macomo and Uithaalder, and anybody else?—(The witness gave no answer).

[Chief Justice.]—Do you mean that Maco mo and Uithaalder dined together?—Yes.

Anybody with them?—No.

[Attorney-General,]—He took it for granted, my lord, that Botha dined, and he thought we wanted to know who dined with Botha.

[Chief Justice.]—I take it so. (To the witness).—Do you mean that Macomo, Uithaalder, and Botha dined together?—Yes.

[Attorney-General.]—Where were you, inside or outside?—Outside.

Was it a house or a pondok?—It was a house.

What did you do?—Stood there.

Was there a horse there?—Yes.

Whose horse?—The old man's.

What old man?—Botha.

Do you mean that you were holding the horse?—Yes.

Was the door open or shut while they were eating?—It was open.

Were you close enough to hear what the people were saying inside?—Yes.

Mention anything that was said inside by the people?—They said that they wanted to take Fort Beaufort.

Who said this?—Uithaalder.

Well?—The others said we have not powder enough.

Who said this?—Some of the party.

How many men were in the house?—Eight men.

Dining all together?—Yes.

Did you hear Botha say anything?—No.

Was anything said about Graham's Town?—No.

Were any cattle killed for this dinner?—They had killed one ox.

Do you know how Botha came to be there?—No.

And after dinner, what became of Botha?—He went away on horseback.

[Cross-examined by Mr. Watermeyer.]—Was Macomo with Uithaalder when Botha came?—Yes.

Now before the magistrate you said that Botha came when Uithaalder was alone and Macomo was gone?—No, Botha was there when Macomo left.

Did you say before that Botha was not there when one of Uithaalder's people said that there was not gunpowder enough?—Yes.

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Was this visit before or after the attack on Fort Beaufort? —Before.

Before the magistrate you said it was a month after.

[Chief Justice.]—Before the magistrate he stated much more than he has said to-day.

[Attorney-General.]—Probably in answer to leading questions which I do not feel competent to put.

[Mr. Watermeyer.]—Do not your companions sometimes call you *malle Jakob* (silly Jacob)?—No, I am also called *Joris* (sawney).

[Chief Justice.]—Are you sure that it was before the attack on Fort Beaufort?—Yes.

Do you know that you spoke differently before the magistrate?—Before the magistrate I said what I say to-day.

Did Botha come to the rebel camp after the attack on Fort Beaufort?—Yes.

When you were in the camp as a rebel?—Yes.

[Attorney-General.]—I am afraid this poor fellow could throw but little light on the cause of the Kat River rebellion.

[Chief Justice.]—I do not ask for light on that at all but to fix a date. Do you know Botha well?—Yes.

You never had any quarrel with him?—No.

[Mr. Watermeyer.]—You are a prisoner for rebellion now? —No, I am not a rebel.

Are you not a prisoner?—Yes.

JOHN GREEN called and examined.

[By the Attorney-General.]—I was residing at Fort Beaufort when I received subpœna to come down here. I had lived at the Kat River. Last year I was living there at Hertzog, the seat of magistracy. Intelligence reached Hertzog of the breaking out of hostilities in Kafirland on Christmas-day, 1850. I know Botha. He was at Hertzog that day. I did not believe myself that there was a rebellion in the Kat River until the 22nd of January. I was then at Fort Armstrong. I went there by order of the magistrate. I got the order on Christmas-day, and left on the 26th. The order was for all parties to assemble at Fort Armstrong. I mean the inhabitants of the Kat River generally. The order had reference only to hostilities with the Kafirs. That order was not obeyed by the field-cornet of Upper Blinkwater. I know that he had orders to bring in all his men. I was present when the orders were given to him, on the 27th or the 29th. It was sent when the news reached Fort Armstrong. It was given to him when the news arrived that Hermanus Matroos had joined the Kafirs. The people of Upper Blinkwater did not come, except three or four of a night to protect the magistrate in the tower. When Botha received the order to bring in his people, he went as if for the purpose of executing it. I saw him at Fort Armstrong almost every day. He was there on that Sunday, the 29th, when he got the order, and I saw him there again the next day. He said that all his men had been pressed by Hermanus, against whom they had not arms and ammunition sufficient to protect themselves.

[Chief Justice.]—Then according to that they must have been pressed between the Sunday and the Monday?—According to his account.

[Attorney-General.]—He may not have been aware of it.

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[Chief Justice.]—A field-cornet, and not know that his men were pressed!

[Attorney-General.]—Had he come in on that Sunday or how long before?—I believe he had slept in the tower on Saturday night.

Are you sure that when he got the orders to go for his men he did not then mention that they had been pressed by Hermanus?—I did not hear him.

Do you know of Botha's removing his family from Buxton to Philipton?—Yes, in the beginning of January.

Was it before or after the attack on Fort Beaufort?—I believe afterwards; but I cannot be positive.

How soon did you hear of the attack on Fort Beaufort?—We heard it the next day. We got letters from Col. Sutton. I beg pardon, we heard of it the same night.

Did you hear that Hottentots had been engaged in the attack?—I did.

This was on the night of the 22nd?—It was.

Then what do you mean by saying that you did not believe in the rebellion till the 27th?—I am wrong if I said there were not any rebels. We had plenty of proof of that from people coming into Fort Armstrong and acknowledging that they were rebels. But I did not think that there was generally a rebellious spirit in the Kat River Settlement till that day.

You know of the existence of a rebel camp in the Blinkwater?—Yes, as it was said; I was never there myself.

Are you aware of any loyal men continuing to live at Blinkwater?—No.

How many of the Blinkwater men do you know of, who came to any place where loyal people were directed to remain?—I can only speak with certainty of one that I know.

You heard of the attack on Fort Beaufort; between that and the 22nd were you in the habit of seeing Botha much?—I was very familiar with him.

Where did you meet him?—At Fort Armstrong. He was generally at the commandant's or the magistrate's, and he used to come often to my place and to Macmaster's.

Was he living at Philipton at this time?—All I know was that he moved to Philipton, and sometimes by his own account to Blinkwater.

How do you know that he was at Blinkwater?—He often brought messages from the rebels requesting me to leave Fort Armstrong.

Do you mean before the 22nd?—Yes.

Mention some of those messages?—He brought me one message from a man named Barens Neuka, a bastard, stating that he wished his old friend, John Green, to leave Fort Armsrong.

You had known this man Neuka?—Yes, well.

[Chief Justice.]—Did Botha only repeat this message without adding anything from himself?—Yes.

Did he say where he got the message?—He said he got it at Blinkwater, where he had gone with a lot of people.

Did you give any answer?—Yes; I said I shall not leave: I have my family here.

Did Botha say nothing more than dryly state this, or did he urge you?—He only told me the message.

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[Attorney-General.]—You say he was in the habit of going with people from Fort Armstrong to the Blinkwater camp; mention who he named as having gone with him?—The Rev. James Read, jun., Hendrik Heyn, Cobus Fourie, sen., Jan Fourie, David Fourie, and some others of that class.

The object being to induce the rebels to become good subjects?—Their professed purpose to entice the rebels to come to Fort Armstrong, and surrender and give up the rebellion.

I understand you to say that it was upon his return from that deputation, or visit, that he brought this message?—Yes, of one of the visits; he was in the habit of going so frequently that I cannot say it was at any particular one of those visits. I have seen Botha ride alone and unarmed from Fort Armstrong, and he has told, me that he had been visiting the rebel camp. He told me so many times.

[Chief Justice.]—He gave you no reason why he went?—No he never told me. I asked him if he was not afraid. He said no, the rebels would not hurt him, and that he was not afraid of Uithaalder and all the rest of them.

Keep within bounds, and tell me how often you have seen him ride out alone and unarmed, in the direction of Blinkwater, before the 6th of January?—About five or six times.

Did you ever send any message to the rebels?—I sent a message by Botha, requesting them to come in; and he brought me their answer back, that old times were past, and that they should remain over the hill.

Do you know whether he was going alone or in company on this occasion when you sent this message?—I am not sure, but I believe in company with the party I have mentioned.

Do you remember anything particular connected with Botha prior to this occasion?—On the 22nd of January, I saw Botha at Fort Armstrong. In the morning of that day he went out in the direction of Blinkwater, with Piet Bantam and another. I saw him return at 10 o'clock. He came galloping into Fort Armstrong, stating that the commando was coming,—the commando was coming. That was all I could get out of him. After the rebels appeared, Botha was one that went across to them, and he brought a message to me from John Goliath, that he wanted me for the purpose of cutting me into *riempies* (strips). These are the messages I had from the rebels.

Do you think Goliath was amusing himself at the time?—I did not, and I did not feel much amused with five or six hundred men round the place.

Do you think this was banter or a threat?—I took it as a threat, for I had had a dispute with this man about a debt.

[Chief Justice.]—Then he wanted to cut you to pieces about the debt, and not the rebellion?—That I can't say.

[Attorney-General.]—Were any guns fired that day?—There were a few guns fired to call the people in.

Did you observe anything particular in Botha's conduct that day?—I noticed Botha that day without a gun, when there were so many rebels around us. He said he had no gun. I said I would fetch him one, and I did do so, and gave it him—and ammunition too.

[Chief Justice.]—Did he say anything?—No.

Was there anything particular in his conduct?—No; he was quiet.

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Was that all, that he had no gun and you went and fetched him one?—Yes; he was very busy in preventing us from firing upon the rebels. He said he had the commandant's orders to prevent us from firing,—those that were anxious to fire.

Were these people anxious to fire?—Yes.

Where was Groepe at that time?—He was with Uithaalder.

At the parley?—Yes.

Did not Botha go with Groepe to the parley?—Yes; he returned; and Uithaalder came into Fort Armstrong and talked with the Rev. Mr. Thomson, Groepe, and others; and during that time Botha and Fourie were very busy in preventing the people from firing.

You do not mean that they wished to fire when they were in the parley?—Yes, we did; for we saw that the Kafirs were coming close round the fort, and we did not know anything of the parley, or what it was for. Botha said he had the commandant's orders to prevent firing.

[Chief Justice.]—Fourie said that as well as Botha?—Your lordship will excuse me what I said about the parley. The reason we were anxious to fire upon them was, two hours were given to allow the women and children to go out, and we said we would not.

[Attorney-General.]—What was meant by sending the women and children away,—did it imply the surrender of the fort?—No.

[Chief Justice.]—Why did you reject the terms, if it did not imply a surrender of the fort?—Because we were not afraid of them.

[Attorney-General.]—And do you think if every man in the fort had done his duty, the rebels might have been repulsed?—Yes.

[Chief Justice.]—Botha might have justly and more wisely thought that it could not be done. It is rather a military question, which neither Mr. Green or myself is competent to decide.

[Attorney-General.]—What was the time finally allowed for the English to evacuate?—Five days.

[Chief Justice.]—Are we to understand that it was accepted?—Groepe accepted it.

[Attorney-General.]—Did the English object to this, and make their objection known to Groepe?—There was not an opportunity to object, for Groepe settled it without reference to us.

How many English were there in the fort?—Thirty-six, I believe.

Did Botha remain there that night?—Yes.

You saw him next morning?—Yes; I saw him at my house. He told me that he was going to the Upper Blinkwater.

[Chief Justice.]—Did he tell you for what?—Yes; on account, that after the five days were given, a message was received from Uithaalder that five days were too long, and that he would only give two,—and Botha went to induce Uithaalder to give five days.

Did you see him go?—I am not positive; but he told me that he was going; and afterwards he told me that he had been.

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[Attorney-General.]—Where did you see him next?—I saw him at Philipton a few days afterwards. I fled from Fort Armstrong on the evening of the 23rd.

Well, when you saw Botha after he had gone to Philipton, what did he say?—He said that he had received an answer from Uithaalder, that it was a mistake,—that he never intended to give more than two days.

The English lost their property?—Yes.

Was this what Mr. Thomson told the people?—Yes.

[Chief Justice.]—Did you take your property with you?—No, my lord.

What, did you not take your wife and family?—I was not able, my lord. I had to gallop away as fast as I could.

[Attorney-General.]—What was putting you in danger?—The people in the fort.

[Chief Justice.]—Do you mean that there were rebels in Fort Armstrong?—Yes, my lord; and we did not find it out until the 22nd.

[Attorney-General.]—Do you mean that the English in the fort were not able to protect themselves against the rebels,—that there were more rebels than Englishmen?—There were.

Did the English go together?—They all left that evening, but in different directions. I went to Philipton.

Where were the women and children then?—At Fort Armstrong.

Did you leave your family?—I did.

Did you think there was no danger to them?—I did not think that the women and children were in any danger.

Did they join you?—Yes, they came in a wagon.

Were they escorted?—No, they came alone.

Do you remember when the magistrate left for Fort Beaufort?—I believe it to be on the 29th or 30th.

Did you see him go?—I did.

Botha was one of the escort?—Yes.

Did you see Botha on his return after the escort?—I did.

Did he say what had occurred at Fort Beaufort?—Yes, he was very indignant indeed. He told me that he had been blamed for what he was not guilty of, that he had been fired at at Fort Beaufort, that he had lost his old horse and that now he would join the rebels,—that he would take Fort Beaufort, and convince the inhabitants that they had a different man than Hermanus to deal with. I believe that was all that passed. I persuaded him as much as I could to desist, and to rest satisfied that he would get his old horse again.

Have you ever had any conversations with him after that?—All we could get out of him was that it was no use for ministers or anybody else to persuade him after what had taken place at Fort Beaufort. After that I did not speak much to him. My reason was to be as cool as possible to him; and I thought the quieter I could keep the better.

[Attorney-General.]—Why quiet in Philipton?—Because Philipton was as bad as any other place.

[Chief Justice.]—What do you mean,—as to the spirit of rebellion?—Yes, my lord.

[Attorney-General.]—Does anything else occur to your memory that happened previous to the affair at Balfour which

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you think it necessary or conducive to the ends of justice to name?—No, I do not.

Do you remember the morning when the farmers came down from the Winterberg upon the rebel camp?—Well.

Did you see Andries Botha that morning?—I did.

Where?—At Philipton.

On foot or on horseback?—On horseback.

Armed or unarmed?—Armed.

This was after the conversation about joining the rebels?—Yes, on the 22nd of February, at peep of day, before sunrise. Where were you when you saw him?—I was walking about in Philipton.

Was there anybody with him when you saw him first?—about five or six people.

Did you know them?—No, they were two or three hundred yards off; it was just light enough to see them.

As you seem, from the distance, to be a little uncertain as to the rest, can you speak confidently as to Botha?—Yes.

In what direction did they go?—In the direction of Balfour.

Was the firing already begun?—Yes.

How long might it take a man to go from Philipton to Balfour, where the fight was?—About half an hour on horseback.

Did you see Botha again that day?—No; I never saw him again until I saw him at Alice (Fort Hare.)

You remained in Philipton all that day?—Yes.

Did the people come to Philipton that day, after the fight from the direction of Balfour?—Yes.

What was the population of Balfour?—About 30 Hottentots and 75 Fingoes. They mustered on the parade that day 85 people. The Fingoes had fled on the morning of the 21st, with the exception of one or two.

What made them fly?—Sandilli's visit on the 21st.

On what day did you leave Philipton to go to Alice?—On the 27th. On Tuesday, the 25th, General Somerset came there.

Was Andries Botha in Philipton when the General came on the 25th?—I believe not.

Could he have been there on the 23rd and 24th without your knowing it?—I believe not; I made inquiries after him from parties that I considered would know,—Willem Valtyn, Jan Valtyn, and others.

Do you know Stoffel Botha?—Yes.

Do you know where he was at the time?—No; I only know that he was amongst the rebels.

[Cross-examined by Mr. Watermeyer.]—You recollect Botha's going to the rebel camp to see Uithaalder?—He told me so.

Then you had not much confidence in his loyalty?—I believed that he would not hurt me; I was not afraid of him.

Had you confidence in him?—I knew Botha so well, and he was such an influential man, that when he said his men had deserted I considered it all a pack of nonsense.

[Chief Justice.]—You were under the impression that he was so influential a man that his men would not have deserted without his consent?—Yes.

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[Mr. Watermeyer.]—Did you sign such a paper as this which I now produce? *—I did.

[Chief Justice.]—Do you know who drew up that, Mr. Green?—My brother.

Do you wish to explain or say anything about your signature to that paper?—Yes; that document was drawn up, my lord, through policy.

What was the policy,—explain it in your own way?—That if Botha had been appointed in the way we asked, the rebels would never have come to Fort Armstrong.

Why should they not come?—We considered that he would have such influence that, if he were in command, we should not be attacked; that was my belief. Botha told me that he would not be ordered by Uithaalder, that Uithaalder was quite a child compared to him.

Was that done? was Botha appointed?—No; the Commandant said he was too suspicious of Botha.

Was the letter sent?—It was mentioned to Groepe, who disapproved of it; and therefore it was not sent.

[Mr. Watermeyer.]—You say you asked some persons where Botha was on the 23rd and 24th; did you ask Fourie?—No; I was told by so many people that Botha was in the mountains and in the bush.

Did you ask Mr. Read, jun.?—No.

Did you not hear at Philipton that Botha had said that if the General came with the Fort Beaufort levy, who had treated him so ill, he would rather not stay, and would go out of the way while they were there?

[Chief Justice.]—Can that be evidence Mr. Watermeyer?

[Mr. Watermeyer.]—Your lordship has it from the witness

* The following is the document produced to the witness:—

"Fort Armstrong, January 16, 1851.

"To J. H. B. Wienand, Esq.

"Sir,—As confidence in commanders is the great mainspring to military movements in times of war, we beg to say that we believe that it would please all the people in the settlement to have Field-cornet Botha appointed second in command to our respected Commandant, whose state of health is such that he has not been able to act with that energy which the circumstances of the times demand.

"When Sir Andries Stockenstrom was going to attack Amatola, he appointed Field-cornet Andries Botha second in command to the Commandant; and on the day of attack, Botha had one of the divisions against the enemy, and afterwards was honourably mentioned in General Orders by Sir Andries.

"We believe that every Hottentot would follow Botha into death as a commander, from the fearlessness and the shrewdness of his plans. We wish not by any means to hurt the feeling of our long-tried Commandant, but we believe that he himself has the greatest confidence in Botha as a commander under him. We believe that the Governor's proclamation would bear us out in the choice of a second in command.

"We are, with the greatest respect, your humble and obedient servants,

"James Green, John Green, Henry Heyn, Willem Andries, Valentyn Jacobs, Fredrik Jordaan, Willem Brass, C. Magerman, Jan Volskin, Hans Jonker, Marthinus Appels, Alle Arends, John McMaster, F. Jordaan, jun., James Jay Eva, John R. Thomson, H. Thomson, Coenraad S. heepers, Isaac Isaacs, Willem Harman, John Sampson, Philip Buis."

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that Botha complained of the Fort Beaufort people; in fact, he believed he had been fired at by them. (To the witness.) —Did you hear this publicly said?—No, not a word about it.

You were aware of the court-martial at Fort Hare?—I was.

Did you inform the judge advocate that you saw Botha go out armed from Philipton on the day of the Balfour fight?—No; but I informed Mr. Wienand, who was assisting Lieut. Griffin, the acting judge advocate.

I believe you boasted in the frontier papers that you could convict Botha?—I beg your pardon!

You are the author of this letter in the *Graham's Town Journal* which I now put into your hands.

[Chief Justice.]—If it would expose you to any prosecution, you are not bound to answer the question; you may reject it.

[Mr. Watermeyer.]—My lord, we will not go against this man for damages.

[Chief Justice.]—You may have a good reason!

[Mr. Watermeyer.]—We have a good one. Well, Mr. Green, are you the author of that letter in the *Graham's Town Journal* of the 27th March, 1852?—(The witness, after a pause.)—Something of the sort, but I cannot say whether the printer may have altered something.

Why did you send that letter to a public paper, instead of communicating with the Attorney-General?—I had my own motives.

Well you must tell us your motives?—(The witness hesitated.)

[Attorney-General.]—Do not be afraid of me, Mr. Green.

[Mr. Watermeyer.]—I ask you what were your motives in sending this letter?—I think one reason was because it conveyed a very hard case.

[Chief Justice.]—He does not abuse himself in it.

[Attorney-General.]—It was a statement which, as soon as I read, induced me to send to the frontier to have Mr. Green examined.

[Chief Justice.]—Why did you not allow Mr. Stringfellow to know what you had to say, instead of writing in the paper? I have told him many a time.

[Attorney-General.]—Then Mr. Stringfellow undoubtedly has not done his duty. He should have acquainted me.

[Chief Justice.]—A man may of course communicate all criminal matters to the public prosecutor. Was Mr. Stringfellow the resident magistrate there?

[Attorney-General.]—Yes, my lord.

[Chief Justice.]—Then Mr. Green had done his duty, but it is difficult to believe that magistrates had not done their duty.

[Mr. Watermeyer.]—This is another letter from you in the *Graham's Town Journal* of the 24th of May, 1851?—Yes, sir, it is.

And this other letter in the *Graham's Town Journal*?—That is mine also. I sent letters to the papers that way, but whether it is the same as the original I cannot say.

Did you read them after they were printed?—Yes.

Did you then find fault?—It was too late then.

Perhaps they are not so strong as you sent them?

[Chief Justice.]—Unless these letters go to show some feeling, they have nothing to do with the case.

[Attorney-General.]—You consider them to show an *animus*?

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[Mr. Watermeyer.]—And more than an *animus*. Well, Mr. Green, you were very much disgusted with the court-martial proceedings; they did not hang half enough for you?—No, I cannot say I am disgusted; I hope I have sense enough not to be disgusted at any court of justice.

You thought a man who had on a waistcoat which was once yours should be put in the tronk and hung as a rebel?—I remember seeing a man that I thought had a waistcoat of mine there, but I did not want to get him in the tronk.

Did you never say to Groepe that Jordaan had your waistcoat?—No.

[Chief Justice.]—What did you say to him?—I said I rather thought that Jordaan had a waistcoat of mine; I saw it was a waistcoat of my own make, which I thought I had lost. I am a tailor.

[Chief Justice.]—What are we to do with this?

[Mr. Watermeyer.]—Why, my lord, Mr. Green, who finds strong analogies, wished to have Jordaan apprehended as a rebel, because he had his waistcoat! (The witness.)—No, sir, I never wished to have Jordaan put in the tronk, and Groepe would not have been the man I should have applied to, if I had.

[Attorney-General.]—You say you wrote these letters, or letters like these, to the newspapers?—Yes.

Let me ask, have you suffered in your family and property in this rebellion?—I have, greatly.

You have something of a feeling in your mind against the rebels; have you had any private feeling against the unfortunate man at the bar?—No.

Any feelings you may have arise from your views as to the rebellion, on public grounds?—Yes.

[Chief Justice.]—Will you swear, Mr. Green, that you never entertained any personal feelings against the prisoner?—Yes, my lord; no man in the Kat River did I respect more than the prisoner.

[Mr. Watermeyer.]—You were anxious to fight at Fort Armstrong?—Yes.

More anxious than when you were under the featherbed or in the pulpit at Philipton.

[Attorney-General.]—I suppose he was on the featherbed, instead of under it?—No, I was under the featherbed, but I was not in the pulpit.

I suppose there must have been danger?—Oh! danger, yes.

[Chief Justice.]—He had probably left his gun elsewhere?—I had to give up my gun on the 25th of January, when I fled.

[Attorney-General.]—A featherbed is not a bad place to be under when you don't wish to be shot! (Witness, laughing.) I found it very hot.

[Chief Justice.]—Well, that is a very good reason for your not seeing Botha?—There was a month's difference in the time.

Well, see that you cast no more feathers about you. You may go. We shall not, I hope, be less serious because we have suffered this.

JOHN HENRY BERNARD WIENAND called and examined.

[By the Attorney-General.]—I am Resident Magistrate of Stockenstrom. I was appointed on the 23rd September, 1850, and did not assume my duties until

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October. I know the prisoner, he was field-cornet of Buxton, sometimes called Blinkwater. Valentyn Jacobs was field-cornet of lower Blinkwater; Peffers was field-cornet of Lushington; Piet Bruintjes was field-cornet of Philipton. The field-cornet of Balfour, which included Fort Armstrong, David Jansen, was absent, and Lotz was acting in his stead. Groepe lived about a mile and a half from Hertzog, where he had his place. I remember the breaking out of hostilities. The first intimation I had was two military settlers coming to me, who told me that the Kafirs were murdering all the settlers in the villages. That was in the morning of the 25th December, 1850. A meeting had been held about a fortnight before, at which certain places were named where the inhabitants were to go, in case hostilities commenced. The Kat River is much exposed to danger in case of Kafir invasion, part of it being on the immediate boundary, and part in British Kaffraria. In the afternoon of the same day I received a letter from the Civil Commissioner of Fort Beaufort, inclosing a copy of the cautionary Government Notice issued by the Governor, and in consequence I gave orders for the parties to assemble at the places of rendezvous, with their families. The intention was, that the whole of the population should assemble at those points, and not be left in the open country. I cannot remember whether Buxton was one of the places where the people were to go. I cannot say whether the people of upper Blinkwater quitted their places on account of this order. I removed to Fort Armstrong on the 26th, and Groepe went also. On the 25th, Fourie got his proportion of ammunition at Hertzog, and went up to his place. Botha got ammunition on the 26th, for the purpose of arming his people and defending his field-cornetcy. I do not recollect what quantity of ammunition he drew that day. I did not issue it personally. It was issued by Mr. E. R. Bell, and I have no idea what quantity he got. But an order was given that all the ammunition should not be issued at once. I do not believe he ever applied for the remainder. The inhabitants of Upper Blinkwater did not conform to my orders about going to one of the places appointed. From something that came to my knowledge I ordered all the Upper Blinkwater people to assemble at Fort Armstrong; and at the same time I ordered Botha to come every evening to Fort Armstrong with a party of men. For some evenings, he brought a few men with him. I asked on these occasions when his men were coming in to take up the position which I had ordered them to do. He stated that they did not like to leave their crops, and made some other excuses. He did not represent that there was anything of a disaffected feeling among them. Finding that they did not, I at last gave him a written order requiring them to come, that he might show it to the people. I did this in consequence of hearing of the disaffection of Hermanus. He promised to do his utmost, and in a few days afterwards he came to me, and stated that the whole of his field-cornetcy, with the exception of one or two, had joined Hermanus—even his own sons. It was rather a large field-cornetcy, and contained, I should say, with the Ghonas, about 200 men able to bear arms. About two-thirds were Ghonas. Hermanus was a Kafir, but he did not belong to that field-

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cornetcy, but to Lower Blinkwater. Some of the Ghonas speak Dutch, but they all speak Kafir, more or less. Botha also said at the same time, that his son Klass, upon whom he depended the most, had also gone over to the rebels, and stolen his own gun; and he said, "I am now here to defend you at this place." I immediately reported the circumstances to Major-General Somerset, as well as the defection of the inhabitants of Lower Blinkwater, which had also come to my knowledge. This was about two or three days before the attack on Fort Beaufort. I remained in Fort Armstrong until the 23rd of January. When the Governor's proclamation of the 10th of January reached me. I insisted on Botha taking his family away from Buxton. He told me that it would be very inconvenient for his wife to be at Fort Armstrong, and he requested me to allow him to move to Philipton, where there was also a post; and I consented to this upon condition that Botha should be daily at Fort Armstrong. He was there afterwards frequently, but I cannot say whether he was daily. I ordered him to report himself to the field commandant every night. That order was given particularly to Botha. There was afterwards an arrangement made that he and Fourie should remain at Fort Armstrong every night alternately, which I allowed. I believe Botha was there on the alternate days; I saw him there frequently. The English inhabitants left on the 23rd, and from the state of feeling then existing, I thought it best to consult with Mr. Read and Mr. Thomson as to my remaining there; and on their suggestion I went to Philipton. When the news had arrived of the affair between Pringle's party and the rebels at the Mancanzana, at which Casper Olivier's people had been killed, the people seemed much excited. It appeared that there was a very disloyal spirit among certain of the people; I should say the majority of them showed that feeling. I should not have left but for that cause. Botha continued to reside at Philipton where I was. I left Philipton for Fort Beaufort on the 29th of January, and reached Fort Hare on the 30th. I remained there until General Somerset's commando left, which I accompanied to the Kat River on the 21st of February. General Somerset's commando reached Fort Armstrong on the 22nd, and left Fort Armstrong on Sunday the 23rd. On the 24th I went to Lushington; I was not with the commando then. On the 25th we went to Philipton by Eland's Post, and on the 26th General Somerset remained at Philipton. I did not see Botha there. It was reported to General Somerset by Fourie that he was absent, and also the absence of Piet Bruintjes. This was told to me by Fourie; I was not present. The order now produced was issued by the General.* Four or

* The following is a copy of the Order:—

"NOTICE.—Fort Hare, Feb. 7, 1851.—Having this day received information from the Rev. Messrs. Thomson and Read, Sen., that there are several loyal persons in the Kat River Settlement who have given no countenance to the insurrection of the natives, and who deplore it,—I hereby direct that all such loyal persons are to assemble at Philipton, Hertzog, Eland's Post, and Balfour, for mutual protection. I expect, however, that those persons so assembled at the above stations will cease to hold any further intercourse with the enemy, in any way whatever,

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five days afterwards I was at Eland's Post, when Botha came in and surrendered himself. He was brought into the post by Peffer and Fourie, both field-cornets, and delivered over to Capt. Fisher, who was the commandant of the post. I asked him where he was all this time, and he stated that on the morning when the attack was made by General Somerset, upon Fort Armstrong, he had left Philipton,—he had left Philipton early, because he was afraid of the burghers and the Fingoes, and that he had concealed himself upon the heights of Philipton. The reason I asked him this question was, that when the attack had been made upon Fort Armstrong, Fourie came to the General's quarters, and I asked him where Botha was. He answered, that he had not seen him that morning. I do not recollect that Botha said anything more when brought in. He was then sent from Eland's Post to Fort Hare with the other prisoners. There was nothing to prevent him from surrendering before. Captain Fisher had instructions to receive all who came in. Eland's Post is about three quarters of an hour from Philipton,—or say an hour at most. I do not know whether Botha had a horse when he surrendered. I did not see him come in, but he had a gun and ammunition, which where taken from him in my presence.

[Cross-examined by Mr. Watermeyer.]—Before the rebellion commenced, what was Botha's conduct?—I always considered him a very effective officer, and after the breaking out of the war, during the period when he divided his time between Philipton and Fort Armstrong, he continued to do his duty usefully and faithfully as before. I went to Philipton on the 23rd, and I saw him frequently there. He was acting under my orders. He was one of my escort when I left on the 29th. Between the 23rd and the 29th, no report was made to me that Botha had been engaged in plundering seven Fingoes or three Fingoes of their horses. Klaas Mafee never reported to me that Botha was one of the parties. I am sure of this. If it had been reported to me I would never have taken him as one of my escort.

[Chief Justice.]—Why do you say that you would not have

and that they will, by intermediate patrols from the above places, prevent the enemy from moving about that part of the settlement. All commands of burghers and all other forces are hereby forbidden to make any attack on the above posts without my orders. And I hereby appoint the Field-cornet Cobus Fourie a Special Commandant in the Kat River Settlement, for his good and loyal conduct, which he has evinced in a long course of service for the last forty years; and I command and direct that all loyal native subjects do forthwith repair to Philipton, and place themselves under the Field-commandant at that post. And I hereby further give notice that all inhabitants occupying the Blinkwater, Mancazana, and Lushington, and other parts of the Kat River Settlement, who have been in daily and constant communication with the enemy (who has been permitted to move unmolested through the location), who do not forthwith repair to the posts I have now pointed out, will be treated by me, and by the forces and burghers under my orders, as enemies. And I call upon all those who have been in rebellion against Her Majesty to proceed to those posts, and lay down their arms, and submit themselves to the Commandant aforesaid, abiding my further directions, until I take the Governor's pleasure thereon.

"H. SOMERSET, Major-Gen., Commandant-General."

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taken him, if he had been reported? He might have been proved innocent, and then, would you not have taken him because he had been reported? I cannot take that as evidence. It is not because he robbed Mafee, that therefore he should not take care of Mr. Wienand; besides he had plenty to look after him if there were Fourie, Peffer, Jacobs, and others. It is false reasoning of Mr. Wienand's.

[Mr. Watermeyer.]—What was the treatment of your escort at Fort Beaufort?—I do not know. I only heard of the treatment.

Did you see great excitement?—Yes, after we arrived at Fort Beaufort, where we staid the night, the Fingoes were going about with assegais.

[Chief Justice.]—Do you know how that excitement arose?—I believe it arose in consequence of the arrival of my party.

Why do you form that opinion?--While I was at Mr. Stringfellow's house, the Rev. Mr. Ayliff came there, and made a report to Mr. Stringfellow, and in consequence of that report, Mr. Stringfellow and myself went to where my escort were collected together. They were then near the barracks at Fort Beaufort. Mr. Stringfellow addressed them, and shortly afterwards the escort left Fort Beaufort, accompanied by Col. Sutton.

Now, is any one the wiser for this?

[Mr. Watermeyer.]—Do you know the reason the escort left?—Col. Sutton told me that he advised them to go away, and he accompanied them out of the town.

[Chief Justice.]—What was the reason that he accompanied them out the town?—He said the escort were very much excited, and there was great excitement in the town; and he thought it better that the escort should leave. Mr. James Read was present during the whole time.

Did you hear of any violence, or act of violence, being committed?—Some time afterwards I heard from Peffer that there had been. There had been an attack made on Fort Beaufort before that time. I saw a great many people going to the square, and the Fingoes had assagais and guns in their hands.

Was there any expression of violence?—There was no expression of violence in my presence.

Did you see any excitement towards Botha particularly?—No, it was towards the whole escort, as it appeared to me.

Was there a tumultuous movement among the people?—There was.

How long did you stay with them after you got this notice?—I don't think I staid there three minutes with them.

How long had the escort been in Fort Beaufort before you complied with Col. Sutton's suggestion and sent them off?—About three hours.

[Mr. Watermeyer.]—Is this a letter which you addressed to the *Graham's Town Journal* the 8th of February?—That is a letter which I addressed to Mr. Godlonton as a private letter. It was not intended for publication.

[Chief Justice.]—How could Mr. Godlonton publish it then?

[Attorney-General.]—It is stated in the very publication itself that it was not written for publication.

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[Chief Justice.]—Does it refer to what took place at Fort Beaufort?

[Attorney-General.]—It is rather a detail of precedent circumstances.

[Chief Justice.]—Of what number did this escort consist; were they all Hottentots?—All, with the exception of Messrs. Read and Thomson.

I suppose they were availing themselves of the escort and not forming part of it?

[Mr. Watermeyer.]—They were actually forming part of it; the escort was for the purpose of showing respect to the magistrate. Now, Mr. Wienand, the chief people of this escort, Fourie, Jacobs, and the others, were they loyal men?—I always considered them loyal. Fourie and Jacobs are still doing duty, I believe, at Philipton; but I cannot speak positively.

[Chief Justice.]—Do you look upon them as loyal men?—I do, so far as my knowledge goes.

[Mr. Watermeyer.]—Fourie especially, is he not one of the stanchest men you know?—I consider him so.

I wish you to recollect with some positiveness on what day it was that Botha came to Eland's River?—I cannot say positively, but I think it was three or four days after Gen. Somerset left Lushington for Fort Hare.

[Mr. Watermeyer.]—When Fourie told you that he had reported the absence of Botha to Gen. Somerset, did he tell you what then did took place? No, he merely told me that he had reported to the General the absence of Botha and Piet Bruintjes.

Did Green report to you that Botha had gone out in the direction of Balfour in the morning of the Balfour fight?—No, he did not; if he had I should certainly immediately have informed Lieut. Griffin who was in command of the post, and it would have been communicated to the Judge Advocate. But he never did.

[Attorney-General.]—You know the man Klaas Mafee?—Yes.

Did he report to you the loss of seven horses?—Yes; he stated to me that Mr. Thomson, Mr. Read, and Mr. Groepe were there, but he never suggested or mentioned to me the name of Botha.

In what language did he speak to you?—He spoke in broken Dutch to me. I could just understand him; it was as much as I could do. The reason I sent for him was this. He was a sergeant of the party that always carried the letters, and I asked him if he could take a letter to General Somerset. He said no, he had been ill-treated by the Hottentots at Fort Armstrong, and he was afraid of the Hottentots.

[Chief Justice.]—Then he did not come to you to make any complaint as to the theft of his horses, but only because you sent for him?—Yes.

[Attorney-General.]—My learned friend has called the attention of the jury to the letter of Mr. Wienand which appeared in the *Graham's Town Journal*, and they may as well have it before them. With your lordship's permission I will read the part referring to Botha;—"A. Botha has been too much mixed up with his sons, who have for a length of time shown they cared nothing about him; for since his mar-

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riage to his present wife they have treated him, not as their father, but as an alien to his family. Let his conduct be inquired into, and he will be able to show where he was, and what service he was doing. When he was accused as being with the enemy he was chiefly with me, and from the first moment of the defection of his Field-cornetcy, and of his sons, kept himself as close to me as he possibly could. I shall say no more. Time will show his real character. As far as he acted under me I found him a most deserving officer."

[Attorney-General.]—Am I to understand that you confine your character of Botha to the date of this letter?—Yes, up to the time when he brought me to Fort Beaufort.

You say there was a meeting on the day after Gen. Somerset came to Philipton. I presume that Mr. Read, and Mr. Thomson, and all the respectable people were there. Could Botha have been there, and you not have seen him?—I would have seen him had he been there; and he could have surrendered if he had heard what Gen. Somerset addressed to the people.

[Chief Justice.]—On the 27th, you moved away to Eland's Post, and therefore you think that if he had been there up to that time, he might have given himself up in consequence of what Gen. Somerset said?—I do.

[Mr. Watermeyer.]—There were Fort Beaufort burghers and Fingoes with General Somerset?—There were; the Fingoes were under the command of Mr. Cobb.

[Chief Justice.]—I suppose that some of the people who were present at Philipton had formed part of your escort?—They had.

Many?—Many of them, as far as I recollected them; and I saw a number of them at Eland's Post.

I suppose you do not know any reason why Botha should be more afraid of the Fort Beaufort burghers than the others?—I do not.

[Mr. Watermeyer.]—I will give you a reason.

[Chief Justice.]—It will be irregular, but I will hear it.

[Mr. Watermeyer.]—One of Botha's sons was wounded in the attack on Fort Beaufort, and the other was known to be with the rebels,—therefore they would naturally be incensed at him.

[Attorney-General.]—Are you aware of any individual who hid himself for fear except Botha?—No one else.

[Chief Justice.]—How do you know he was hiding himself? He might have been firing his gun all the time for aught we know, instead of being in the bush?—It was merely what he told me.

[Adjourned.]

SATURDAY, 15TH MAY, 1852.

Mr. WIENAND recalled and re-examined.

[By the Chief Justice.]—There is one passage of your evidence about which I wish to refer to you. You told us that Botha at last came and reported that almost all his people had joined the rebels. How long was that before you left Fort Armstrong?—It was fourteen days, or more; it was a few days before the attack on Fort Beaufort.

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Then it was not long after you gave him the written order for the people to assemble?—It was shortly after. I wish to mention that my reason for giving the order in writing was, that a Hottentot thinks more of a written order than of a parole one, and therefore I gave it to him that he might show it to the people.

Then you do not mean to imply that Botha appeared unwilling that the people should come, but that the people were unwilling?—That was my impression. I did not think he was disinclined to bring them.

[Mr. Watermeyer.]—Was it with your knowledge that Botha went out from the fort on the 22nd, the day of Uithaalder's demonstration?—It was with my knowledge. He asked me, and I gave him permission, provided he took some people with him.

[Chief Justice.]—Was that to protect him?—I did not think it advisable for one man to go out alone.

Did he ask you to go to Blinkwater?—To Buxton, as he said, to look after his crops which were growing there.

You saw him come back?—No, I saw him after he came back.

Can you say what time of the day it was?—I should say, to the best of my recollection, it was about 11 o'clock; it might have been earlier.

[Attorney-General.]—You say you gave him permission provided he took some of the people with him; had he ever your permission to visit any rebel camp alone?—No, he had not.

Did he ever report to you that he had visited any rebel camp alone?—No.

Would you have granted him such permission had he applied for it?—No, I should not.

[Chief Justice.]—Messrs. Thomson and Read used to go over to the camp, we know for what purpose——

[Attorney-General.]—Not Mr. Thomson; Messrs. Read and Van Rooyen?—Yes, when the proclamation came from the Governor, Mr. Read was employed by me to explain it to the people, and I made an arrangement what people they should take with them. I considered it my duty to do everything in my power while the proclamation was in existence to induce the people to come in.

[Chief Justice.]—No one can doubt what the ministers would do, how earnestly they would labour to effect that object. Every sense of interest, as well as duty, would urge them, if possible, to bring the people to their allegiance. Rebellion was as much ruin to them, or more, as regards their personal interests, and personal feelings, than to any other person.

The Attorney-General said he wished to mention that he now felt himself placed in some degree of difficulty and he would shortly state the nature of it. All the witnesses whom his learned friend had been pleased to say he considered that he had got a list of, had now been examined; and there remained five witnesses whom, being willing to bring all possible evidence for the purpose of giving the jury a complete knowledge of the case, he would be glad to put in the box. He did not say, it would not be true, that they would prove any new overt acts, but they had evidence to give which it would

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be a relief to his own mind that they should communicate. They were Mr. Edward Bell, Mr. Cyrus, the interpreter, and the three men whom he had caused, in consequence of statements made by the previous witnesses as to who were present on certain occasions, to be brought down from Bain's Kloof by a constable who spoke Dutch,—and who had been since kept in the tronk separate and completely free from communication with each other, with any person whatever, until on Monday evening, at the rising of the court, he had gone down and put a few questions to them. He believed they had something to say which he should be glad that they should be allowed to say to the court. But he understood that his learned friend would insist upon his objection, that the provision of the statute of 7th Anne,—requiring that a list of all the witnesses to be produced against the prisoner on a trial for high treason shall be furnished to him at least 10 days before the trial comes on,—is incorporated in the 72nd ordinance of this colony. Now, in this grave and serious case, he had such a horror of arguments in arrest of judgment, and of a host of other proceedings after the verdict was given, that his impression was, he should simply tender these men, one by one, and if his learned friend objected, merely bring them into court, and close his case. But he did not know whether his lordship would be disposed to save the point, or whether on grounds and reasons which he was now prepared to state, it might not rather be held that there was nothing in the point if taken in due time, and, secondly, that this was not the time to take it.

The Chief Justice said he would wish to hear what Mr. Watermeyer had to say. The witness might be called, and a question asked him on the *avoir dire*, in order to raise the point.

Mr. Cyrus was accordingly called and placed in the box.

Mr. Watermeyer said, he objected to the examination of Mr. Cyrus in this case on the principle that, by the 49th section of ordinance 72, it is enacted, that in cases of high treason, only such witnesses shall be competent, and such evidence admissible, as are competent and admissible in the courts of Westminster to convict a prisoner of any such crime. Now, it was perfectly clear that in England, in such cases, where a list of witnesses has not been properly furnished to the prisoner ten days, at least, previous to the trial, any witness not on that list, proposed to be examined on the part of the prosecution, would not be admissible. It was now proposed to give, in this case, the evidence of witnesses who were not on such a list. As he has stated, he did not wish to take the technical objection that no list had been furnished, because, in the extreme liberality which the Attorney-General had used, he acknowledged that he had had, with regard to the evidence, what was better than a list, and therefore he had not sought to postpone the trial for 10 days more in order to obtain a formal list, feeling that in having had such ready access to the depositions of the witnesses, he had had what was more than equivalent to a list.

The Chief Justice said it was obvious that nothing like a list had been furnished, such as was required to render evidence, in such cases, admissible in England; and the counsel for

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the prisoner having consented to go to trial without it, he could not after swallowing the camel, strain at a difficulty like this.

Mr. Watermeyer admitted that he had been furnished with sufficient, and more than sufficient, to enable him to know the witnesses whom it was intended to bring forward; and therefore he had felt that sufficient had been given him to fulfil the intention of the ten days' notice required by the statute. But now, on the trial, he was surprised by the production of a number of witnesses of whom he knew nothing, and of whom the prosecutor himself could have known nothing ten days before the trial. He was astonished by the portals of Bain's Kloof being again opened, and he knew not whether, as the trial proceeded, the whole convict population of Bain's Kloof might not be brought down to overwhelm his unfortunate client with pretended evidence which was still unthought of. It was time, therefore, that he should take the objection, and close the gates of Bain's Kloof. He should not have taken the objection to Mr. Bell, or to Mr. Cyrus, on this ground; because, although he had had no notice of the production of Mr. Bell, yet it had been in the power of the attorneys to take a copy of his deposition, which was equivalent to being furnished with the name of Mr. Bell on the list. Although, therefore, he might have been injuring the question as far as the Bain's Kloof evidence was concerned, yet he would have waived the objection to Mr. Bell and Mr. Cyrus; but he now felt bound to take the objection also to them. His learned friend contended that nothing like a list had been furnished, and that therefore, as he had consented to go to trial without it, he had waived and lost entirely the right to notice. Possibly, this might be true if he had had an opportunity of knowing anything of the witnesses who would be brought forward, as in the case of Mr. Bell; but now they were to be inundated with witnesses of whom his learned friend himself had heard nothing ten days before the trial; and of whom it is clear that if he had furnished a list, in literal compliance with the terms of the statute, the names of these three convicts would not have been on that list. If, then, he had waived anything, what had he waived? He had waived nothing which his learned friend could have supplied him with ten days before the trial. The waiver could only apply to that which could by possibility be waived, which was a list of witnesses which the prosecutor intended ten days before the trial to produce. Then, as to the proper time of taking this objection. Supposing, now, that he had such a list as would have been given ten days before the trial, it was perfectly clear that if a person whose name was not on the list were called as a witness, he could not object to him until he was produced.

Chief Justice.—It amounts to a demonstration.

Mr. Watermeyer.—The proper time, then, to object is, when the incompetent witness is put into the box. The proper time to object to no list being given, would be before trial, for postponement; but the only time when it is possible to object to a witness who is not down on the list, or what in this case is equivalent to a list, is when he is brought forward; and it is clear that such a witness would not be allowed to give

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evidence in the case. This was plainly laid down in the passage he had formerly quoted from Taylor, page 110. He contended, therefore, that although he would not have objected to Mr. Bell or Mr. Cyrus being examined, yet with regard to these three convicts there was no waiver; and that these men could certainly not be allowed to give evidence in this case.

The Attorney-General said,—Considering the momentous consequences connected with this case, no one could dispute the propriety of his learned friend taking every point that could possibly be taken, and he should be the last man to quarrel with him for taking a course which he might call sharp practice in a civil suit. His learned friend was right in taking the point, but he (the Attorney-General) thought he was right in submitting that there was really nothing in the point taken; and he rested this opinion on two propositions, —first, that no list of witnesses such as is in England required by the 7th Anne, c. 21, § 11, is required in this colony by ordinance 72, or any other law in force therein. And secondly, that even if such a list were necessary in this colony, no list of witnesses whatever has been furnished in this case; for which reason the objection now taken is too late. The learned gentleman then proceeded to argue at great length in support of these propositions. He maintained that the statute 7th Anne is a part of the criminal law which regards criminal procedure, and not a part of the criminal law which regards the competency of witnesses. That if there was any intention to make such a list of witnesses necessary in this colony as is necessary in England, it would be found in the local ordinance 40, and not in our law of evidence, because ordinance 40 sets out everything that is to be done by every party prior to the moment at which the prisoner is to plead; and if there were any intention to introduce a most mischievous anomaly in this colony, which should put trials for treason on any other footing than trials for murder, it would have been made in those portions of the law which regard criminal procedure. That the incompetency of witnesses under ordinance 72, is something personal in the witness, and nothing which regards the acts of the Attorney-General or any other officer; in support of which he appealed to Philips, to Roscoe, to Archbold, to every book on evidence except this new book of Taylor's, and it would be found that under the head of incompetency of witnesses no allusion is made to anything connected with the statute of Anne. He contended that the astute mind which had been directed to the framing of ordinance 72 (the late Mr. Justice Menzies) never could have contemplated the introduction of that heterogeneous mass of absurd provisions which regulate proceedings for high treason in England; for no two things can be more distinct than the treason of this colony, the *lese Majestatis* of the civil law, and the petty treasons defined by the statutes of Edward and other English enactments. There are substantive things which are substantive to both, such as the embodying of armed men, and fighting against the supreme authority,—that must be treason all over the world; but when we come to compassing the Queen's death and adhering to the Queen's enemy, then we get a technical variance, which is applicable to England, and which

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governs the application of this statute of Anne in regard to witnesses. (Archbold's Criminal Law, p. 441, 10th ed.)

The Chief Justice.—It is well to call to your mind whether treason can vary at all in this colony under the command of the British crown as it is, from treason as connected with the safety of the crown in Great Britain. You seem to be drawing a constructive distinction. and the question arises,—can treason vary in any part of the British dominions?

The Attorney-General referred to the case of Daleghan *vs.* Daleghan before the Privy Council, and other cases, and maintained that the legal principle was this, that in respect to plantations and colonies, the law of England determines what is the sovereign, but in a colony, the law of the colony determines what are the functions and powers of the crown. But he did not rely upon this, and having stated it to be his impression, he passed on to remark, that the principles of our law, in reference to the prosecution of crime, would render the application of such a statute as that of Anne in this colony most injurious,—and therefore that no construction should be given to introduce it. For, by section 30, the prosecutor is represented by deputy at the preliminary examination, and whatever proof is thus taken it is his duty to bring forward, and it is the duty of the deputy to cause to be examined every person who can give any information in reference to the charge. Thus, suppose a man on trial for high treason—not defended by able counsel, and all the rest, like the prisoner, but a humble Hottentot, placed at the bar for high treason,—what would be the duty of the prosecutor? Not merely to bring forward witnesses to hang that man, but to bring forward all witnesses who can give evidence either for or against him;—and his lordship knew that this was the practice here, in cases where it was not seen that the defendant had got more efficient means of doing it for himself;—and then it would be most unjust to the defendant that if the prosecutor should happen to omit a material witness, he should be debarred from calling him because he had not intended to call him ten days before the trial. This statute was framed at a time which, thank God, exists no longer,—when the memory of Jeffreys, and Saunders, and others like them, was still fresh in the mind of the country,—when Attorneys-General were like wild beasts, seeking for blood,—but to apply this destructive principle now, would hang more men than it would save. These were his reasons for thinking that the statute of Anne was not imported, and would be most pernicious if imported, into this colony. On the second point, his learned friend had thrown out something as if he had been very liberal in admitting the witnesses he had admitted,—but he would be guilty of a great crime if he were, in the slightest degree, liberal. He should not have the slightest feeling for the prosecutor or his oversights, but must take advantage of every one of them,—for that was his duty. But he had not been in the slightest degree liberal, because, by affecting to concede that he had a list when he had got none, he might effectually shut his (the Attorney-General's) mouth, and defeat the ends of justice. A case in which this point underwent the most deliberate investigation was that of the Queen against Frost and others, tried before a special commission at Monmouth,

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in January 1850, (Townsend's Modern State Trials, vol. 1, p. 1), where, after the prisoners pleaded guilty, and the Attorney-General rose to open his case, the objection was raised that no list of witnesses had been furnished. After argument, the three judges saved the point, and the parties were convicted. The judges afterwards held that the objection would have been good if taken in time; but that if taken in time the effect would only have been to delay the trial to afford time for a delivery of a list. Now, in this case, he had not given any list, but had afforded every opportunity to the attorneys on the opposite side to take copies of all the depositions, or rather, copies had been taken for them gratuitously, by a young gentleman in his office, of every paper connected with the case of which they desired to have a copy. But his learned friend said he waived the notice, and considered that his unlimited access was equivalent to it. Waived it,—for what purpose? Had he taken the objection at any time before the trial came on, admitting that he was entitled to it, the only effect would have been to postpone the case for another ten days. But now, if his learned friend's objection were allowed, the effect would be, that he might pick and choose his witnesses, considering those only to be witnesses whose depositions he might have selected to take copies of, and thus shut out the whole of the opposite case. He therefore contended that the statute of the 7th Anne did not apply, and that the objection was taken too late.

Mr. Watermeyer replied, and contended that the prisoner was entitled to have had notice of the three convict witnesses who were now brought forward by surprise, and who had made no depositions of which he could have had copies taken.

The Chief Justice held that the objection was invalid, both in respect of principle and of the time when it was taken.

Objection overruled.

George Cyrus called, and examined by the Attorney-General.—I am Government Kafir interpreter and superintendent of Fingoes. I remember the man Hans Fister being examined in Graham's Town before Mr. Hudson, in reference to this charge. I was a witness to his signature to the deposition. The prisoner was present, and asked questions of the witness. After putting his questions, when he could put no more, he said he would not deny having being at Van Beulen's Kloof at the time mentioned by the witness. That he had proceeded there for the purpose of looking for cattle which had been lost, but that he did not then furnish Stoffel Botha,—I think that was the name he made use of,—with a horse. This was not in open court, but in the gaoler's parlour, before Mr. Hudson, as resident magistrate, Mr. Haw, clerk of the peace, Mr. Huntley, the magistrate's clerk, the Rev. Mr. Thomson, and myself. Mr. Haw took down the deposition.

[Chief Justice.]—How is it that it did not take place in open court?—I am not aware.

[Attorney-General.]—He had been previously committed, and this was only to let him see this witness face to face.

[Chief Justice.]—It may be remembered, that although my notes are my property, I know not where they may go, and therefore I cannot take upon them what is not legal evidence.

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They are a criterion of the management of the court business. I am alluding here to what passed between Mr. Read and one of the men under a tree at Fort Armstrong. I said I cannot take it. I mention this only that it may be known on what principle I act in this respect.

[Attorney-General.]—Mr. Huntley, whose signature is with yours to this deposition, understands Dutch perfectly?—Yes.

Do you know that the prisoner made a declaration in this case?—Yes, and this is also my signature attached to it. I heard this declaration made. The prisoner was cautioned in the usual manner. This, which is in my hand, is the declaration. It was read over to him after he had made it.

The Attorney-General then read the declaration, as follows:—"Cross-examined by the Prisoner.—I saw you give Stoffel "your horse. You sent for the horse and desired the man to "saddle up the horse and give it to your son, who was wounded. "I did not see you come to the camp on the yellow horse, but "when I arrived you were sitting there, and I heard you desire "Frans Valtyn (who is now a rebel and was there) to fetch the "horse and hand it over to your son. I saw Frans Valtyn fetch "the horse, saddle it up, and hand it over to Stoffel Botha, who "was suffering from a wound in the foot which he received at "the attack on Fort Beaufort. Frans Valtyn held the horse "while Stoffel Botha mounted. (The prisoner here voluntarily "admits that he was there in search of cattle which he had "lost.)—(Signed) Hans Vriester X, his mark.—Taken before "me, (Signed) H. Hudson, R. M.—Witnesses: (Signed) "C. H. Huntley, G. Cyrus."

Edward Russell Bell, examined.

[By the Attorney General.]—I resided at Kat River before the rebellion broke out. I was living there at Christmas, 1850, on the Shiloh road, close to Fort Armstrong, about an hour from it. I removed into Fort Armstrong on the 26th of December in consequence of an order from the magistrate. All the English persons in the settlement were collected there. I quitted it with the other English the day after the rebels made their appearance. During the time I was at Fort Armstrong, I was in the habit of seeing Andries Botha there. I was then in the Commissariat department. My father had charge of the issuing of ammunition.

Do you know anything of any party who got ammunition for the purpose of the general defence at that time?—Yes, Botha got ammunition.

[Chief Justice.]—Do you know it of your own knowledge?—I saw it issued by the magistrate's clerk, Mr.

Does your memory serve you with regard to the quantity?—I cannot say.

Do you know whether it was more than 100 rounds?—Oh, it was more than 100 rounds, but I cannot say how much.

[Attorney-General.]—What was it for?—For the protection of his district.

Can you say how soon he got this?—He got it at Hertzog before I went to Fort Armstrong

When?—On Christmas-day.

Do you know of his getting any other supply at Fort Armstrong?—I did not see it, but I heard it from my father.

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Did you see much of Andries Botha when he was at Fort Armstrong?—Yes, when he was at Fort Armstrong.

Was he often there for you to see him?—He was there sometimes.

How much of his time?—I should say he was about half of his time at Fort Armstrong, and half of his time elsewhere.

Have you seen him coming in and going away from Fort Armstrong?—Yes.

On these occasions, or on any of them, was he alone?—He was generally alone.

Armed or unarmed?—I always noticed him unarmed.

[Chief Justice.]—Why did it occasion notice with you that he went out unarmed?—Because he went out after dark, in a direction where we could not go unarmed.

What direction do you refer to?—The Blinkwater direction.

Did you mention this fact to anybody?—Yes; it was commonly talked of amongst the English.

[Attorney-General.]—Could you charge your memory how often, about, you have seen him ride out alone in the direction of Blinkwater?—I could not say exactly.

[Chief Justice.]—Was it twenty times?—I should say more than half a dozen times, but I should not like to say twenty, though it might be so.

Do you speak of his going out after dark?—Yes.

Blinkwater lies in a different direction from Philipton?—Yes.

Can you say how long he remained away?—When I was sentry in the morning, I have seen him returning early from the direction in which I have on other occasions seen him riding out.

[Chief Justice.]—But you cannot tell whether he had gone out on the same morning?—I cannot say.

[Attorney-General.]—Are you aware that any other person did the same thing?—No.

Have you ever had any conversation with Botha in reference to where he went to?—No.

Did you ever hear him speak of the proceedings or intentions of the rebels, or what they were going to do?—I have heard him say he could go to their camp at any time.

[Chief Justice.]—Anybody might do that?—But he would not come back again.

Mr. Read went and came back. Did he say anything more?—When the trader Allison wanted to get from Fort Armstrong to Post Retief, Botha said he would take him.

Must he necessarily have passed the rebel camp, or could he have gone round, in going to Post Retief?—I do not know.

[Attorney-General.]—Did you ever hear that the rebels had attacked Post Retief?—Yes.

Can you say whether you ever heard Botha speaking of that circumstance in any way?—I do not know whether Botha spoke about it or not.

Did you ever hear him say anything about it?—I don't remember that he did.

Do you recollect hearing of the death of a farmer of the name of Bear, who was said to have been killed by the rebels?—Yes.

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Do you remember hearing Botha say anything about it? —No.

I am examining from your previous deposition.

[Chief Justice.]—Do you recollect being examined?—Yes.

I know that you have had a great deal to suffer since, but you must recollect what you stated?—I recollect he was talking about a man named Eastland being murdered.

[Attorney-General.]—What did he say of him?—He told us that he was murdered by Hermanus's Kafirs.

Did he mention how he knew it?—No.

Had the report reached you before Botha told it?—No.

[Chief Justice.]—It might have been heard by others?—It might have been.

[Attorney-General.] You recollect hearing of the attack on Fort Beaufort on the 7th January?—Yes.

Did you know any of Botha's sons before the war?—No.

Do you know anything of a wounded son?—There was one came to Fort Armstrong.

This was after the attack on Fort Beaufort?—Yes

How did he come?—In a wagon.

How long after the attack?—I cannot say.

Several days after?—Yes.

How long did he remain at Fort Armstrong?—Two or three days.

In the wagon?—Yes.

Who brought him there, do you know?—I don't know.

Do you know whether Commandant Groepe or Mr. Wienand knew of his being there?—I don't know about Groepe, but Mr. Wienand did.

Did you hear Botha say anything of the attack on Fort Beaufort?—Shortly after the attack there was a report raised that the English had been defeated, and on inquiry being made it appeared that only Botha and William Coto came in from that direction.

By whom was the inquiry made?—By Mr. Wienand.

Do you recollect the 22nd of January when Uithaalder came to Fort Armstrong the day before you left?—Yes.

Do you recollect when Uithaalder's commando went away to the Blinkwater?—Yes.

Did you see anything of Botha after that day?—I can't say.

Five days were to be given for the English to depart?—Yes.

How came you to go the next day?—Because we saw the state the fort was in; and further, Botha brought a message which he said came from the rebels, that we should not have more than three days.

[Chief Justice.] Had he been sent out at all from Fort Armstrong to inquire from the rebels?—I don't know.

Who raised the suggestion that three days had been given instead of five?—I heard from Botha that we were only to have three days.

Was he alone?—Yes.

Did you see him come back?—Yes.

From the direction of the camp?—From where the rebels were; they were just going over the rise when he returned.

Did he speak it aloud to the people?—Yes.

Can you at all recollect the manner in which he expressed this message?

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[Attorney-General.]—Are you able from your knowledge of the people and the state of feeling when you left on the 23rd to speak of the loyalty or disloyalty of the inhabitants?—Yes.

[Chief Justice.]—When you left did you think there was a spirit of disaffection prevailing to a great degree?—Yes.

Did the English remove their property from Fort Armstrong? No, with the exception of the horses which they rode.

Can you tell whether they left much property behind them? —Yes, to a very large amount.

Was any portion of that ever recovered to your knowledge? —I believe a few articles were brought by the females when they came out.

Do you mean that the greater part was lost or taken by the rebels?—It was taken possession of by people living there; I do not know whether they were rebels or not.

Do you think there were more disloyal than loyal men there?—I have no doubt of it. I went to Whittlesea. I saw nothing more of Botha.

The Attorney-General said, the object of this examination was to show the state of things at Fort Armstrong before the Fingoes came, but there was nothing to connect Botha with the plundering of the shops. There was no allegation against him of the kind, and no proof in the world.

[Cross-examined by Mr. Watermeyer.]—When you and the other Englishmen went from Fort Armstrong had you an escort?—We could get no escort at Fort Armstrong, they refused to give us any; Mr. Read just went with us, and at Pedlar's we got six men.

[Chief Justice.]—Mr. Read still had influence with the people?—Influence with the people there, but I do not know what influence with the rebels.

Mr. Thomson, had he influence?—He had.

And Groepe?—He must have had some influence, too.

And Botha?—He had great influence.

Do you think he had more influence than Groepe?—I thought he was more fit to have command than Groepe.

That is an opinion. I ask as to the fact? I think that Botha had more energy, and was more fit to command than Groepe.

[Mr. Watermeyer.]—What Mr. Bell means is, that if Botha had command he would have greater influence. (Witness). No, I did not mean that, and I did not say that.

I suppose you would have been content if Botha had gone with you as an escort, for your protection?—We did not want any protection; we were strong enough to protect ourselves.

Andries Jansen called.

The Attorney-General said, with regard to this witness there had been no previous deposition taken. He had only seen him for a few minutes the other evening, and asked him a few questions. (To the witness.) You were tried before the court martial at Fort Hare?—Yes.

And you are now under sentence of imprisonment for life? —Yes.

Do you know Andries Botha, the field-cornet at Blinkwater? —Yes.

Do you remember seeing him at Fort Hare when he was there a prisoner?—Yes.

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Now, tell me, from the time the rebellion broke out at Christmas, had you ever met him before you met him at Fort Hare in the tronk ?—I saw him at Blinkwater.

Was this during the time when Uithaalder had a camp at Blinkwater ?—Yes.

Do you mean that you saw him in the camp or at another place at the Blinkwater ?—In the camp.

How often ?—I saw him there three times.

The first time was he alone or in company ?—The first time he was by himself.

Was Uithaalder there then ?—Yes.

Can you say whether this was before or after the attack on Fort Beaufort ?—It was before.

On that occasion do you know whether he and Uithaalder spoke together ?—They were together, but I could not hear what they said.

Were you inside or outside of the house ?—Outside.

How long were they ?—I cannot say.

How did he come—on foot or on horseback ?—On horseback.

Could you say how long he remained in the camp before he went away again ?—He remained till 12 o'clock.

When did he come ?—About 8 o'clock.

Did you observe whether he spoke to any of the other people except Uithaalder ?—Yes, he walked among the other people, and he mixed up with them.

Did you hear anything he said that day to the people ?—No, I was not so near.

The second time, did he come alone ?—The second time Mr. Read and Mr. Van Rooyen were with him.

Do you mean young Mr. Read, or old ?—I saw old Mr. Read, young Mr. Read, and Mr. Van Rooyen.

Young Mr. Read had spoken to the people to be peaceful and good subjects ?—Yes, I heard that.

Did you hear Andries Botha say anything to the people that day ?—No.

Did you see Uithaalder and Botha speaking together ?—Yes.

Was it before or after Mr. Read spoke ?—After.

Did you hear what Uithaalder and Botha said to each other ?—No, I did not; I did not go to listen.

Did you see whether, when Botha and Uithaalder were speaking together, there were any of the people with them ?—There was a person, but he is not here now. His name is Spielman Kiviet. He is now among the Kafirs.

The third time he came was he alone or with people ?—He was by himself. I cannot say whether two or three weeks had elapsed. He came early in the morning and staid till sundown.

Do you remember whether the people were assembled for him to speak that day ?—Yes.

What did he say to them ?—He said that his children were all amongst them, and that he was amongst them too.

[Mr. Watermeyer.]—Repeat the words.

[Chief Justice.]—You may ask him to do so, but you cannot expect a man like this to repeat a speech beyond its general bearing.

[Mr. Watermeyer.]—It is very dangerous to admit such a practice.

[Chief Justice.]—That is observation, for the jury.

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[Mr. Watermeyer.]—I ask the man to repeat, as near as he can, what Botha has said?—Uithaalder said, "You must come and do your work." He said, "I am in the work." Uithaalder then said, "Which way are you in the work?" He said "By my children, they are all working, and I am in the work also."

[Attorney-General.]—Do you recollect anything more?—No.

[Chief Justice.]—Cannot you tell us anything more?—No.

Did all this pass between Botha and Uithaalder in daylight, before the people?—Yes.

[Attorney-General.]—You say he went away towards sundown?—Yes.

Did you ever see him between that day and when you saw him in prison?—No.

Were you in prison at Fort Hare?—Yes, I had been made prisoner at Fort Armstrong the day it was taken by General Somerset.

While you were with Botha in prison, did you hear him say how he came there?—He said the reason he came there was about a yellow horse which he won at Balfour. Van Beulen and Hans Groepe and others were present. Botha did not say how he got it. He spoke no more.

[Attorney-General.]—When did you come down from Bain's Kloof?—On Tuesday.

When did you arrive here?—On Wednesday.

Who sent you down?—The superintendent.

Had you any conversation about this case with Van Beulen or Groepe?—No.

[Chief Justice.]—Why not?—Because we were not aware we were coming.

Were you together the night you slept at the Paarl?—No.

Did you speak on the road?—No.

Why not?—Because we did not know why we were coming.

Were you together since you have been in town?—Yes.

[Attorney-General.]—My orders were to have them separated, but the arrangements of the prison did not allow them to be kept apart.

[Cross examined by Mr. Watermeyer.]—You, and Van Beulen, and Lotz, and Groepe were all together outside the court just now?—No.

There was only an iron grating between you?—Yes, but the sentry walks up and down.

Where were you before you came here, at Blinkwater, with Uithaalder?—No, I was on my road to my house from Beaufort, and I met the rebels. They asked me where I was going, I said to my house. They asked me if I would remain on the English side, and if I did they would kill me; and through fear I joined them.

[Chief Justice.]—Was this before or after the attack on Fort Beaufort?—Before.

Why did you not run away?—There were guards put all round the camp,

How long did you remain with them?—About two months and a half, till I was taken at Fort Armstrong.

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COBUS VAN BEULEN examined.

[By the Attorney-General.]—You have come down from Bain's Kloof?—Yes.

You came with Andries Jansen and Marthinus Groepe?—Yes.

Do you know what you come here for?—No.

[Chief Justice.]—Do you mean you do not know now?—No.

[Attorney-General.]—You know Andries Botha, the field-cornet of the upper Blinkwater?—Yes. (Identified the prisoner).

You and he were together in Fort Hare?—Yes.

Do you remember his saying there anything about a horse?—Yes.

Tell us what he said?—We asked what was the reason that he, the old man, had also come to us in the cell. He said it was on account of a yellow horse which he had taken from a Kafir, that morning when the farmers came and fought at Balfour.

[Chief Justice.]—Did he say anything more?—No.

[Cross examined by Mr. Watermeyer.]—He did not say that he was in the fight at Balfour?—He did not say that at all.

[Chief Justice.]—This is again observation for the jury. The cross-examination must be as to facts. You may as well ask him is not the moon made of green cheese.

[Attorney-General.]—Were you ever in the rebel camp?—No.

Did you ever fight against the English or against the Government?—No, I never fought. I never had a gun.

This, my lord, is merely in reference to what I may have to say to the jury as to what kind of man this is. I know from the examination how he came there.

MARTHINUS GROEPE called.

[Attorney-General.]—You are a son of commandant Groepe?—Yes.

You know Andries Botha?—Yes.

Were you in confinement with him at Fort Hare?—Yes.

Was anything said there about a horse?—Yes, I heard him speak there of a horse which he had won at Balfour in the fight.

Anything more that you can remember?—No.

You were at Fort Armstrong the day that Uithaalder's commando came there?—I was there.

What did you hear Botha say?—When we were ready with our guns to resist, I heard the old man say we would be fools to fight against our own people for the sake of the English; and why should we purposely enter into a case with which we had nothing to do. I heard nothing that passed.

[Chief Justice.]—Did he say anything of this at Fort Hare?—Not that I heard.

[Cross examined by Mr. Watermeyer.]—You are a convict for life?—Yes.

[Chief Justice.]—When Botha said you would be fools to fight against your own people for the sake of the English, could he have been heard by the people?—We were all on one side and the enemy on the other side. Those who wanted to hear it might have heard it.

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Where were you when you heard it?—I was a little way within the door of the fort, in a square which we had made with stones.

And you say that you would have fired upon the rebels if Botha had not said this?—If the rebels had come on and done what they intended, we should certainly have fired.

[Chief Justice.]—Whether Botha had spoken or not?—Yes.

Did you not fire because Botha told you?—No, not for that.

Then the reason you did not fire was because the enemy did not come on?—No, the clergyman went off and made a settlement with them.

Then it was not on account of Botha saying that you would be fools for not firing that you did not fire?—No.

Did you live at your father's house before the war?—Yes, till about two years ago.

Were your families good friends?—So far as I know there was no ill-feeling between us.

Have you anything against Botha now?—No.

Have you always been good friends with him?—Yes, always good friends.

Then you would not come here and swear falsely against him?—No.

Are you certain of what he said about the yellow horse?—I am not sure about a yellow horse, but he said a horse.

He said he had won a horse, how: was it that he had won it from a Kafir?—I cannot say from a Kafir, or a Hottentot, or an Englishman, or a Boer.

The Attorney-General said,—My lord, the nature of the evidence given by the four men from Bain's Kloof is of such a nature that it is necessary to show that there was no tampering or anything of the kind with them. For that purpose the evidence of Mr. James Bain, the brother of the superintendent, is important.

[Chief Justice.]—That is not for the jury. I cannot say that it is relevant evidence until you have to rebut an imputation of tampering.

[Attorney-General.]—I cannot avoid seeing that this case is contested with extraordinary zeal and interest on behalf of the prisoner.

[Chief Justice.]—I don't see why.

[Mr. Watermeyer.]—I do not contend with more interest than in an ordinary case, where a life is at stake!

[Attorney-General.]—If no attempt will be made to impute tampering, it is of no use parading the man.

[Mr. Watermeyer.]—It *is* of no use parading the man.

[Chief Justice.]—Persons are looking at me, at this moment, and a degree of interest is shown, which makes it appear that this is not an ordinary case.

[Mr. Watermeyer.]—It is an ordinary case of life and death, and that is enough for me.

[Chief Justice.]—That is enough for all of us.

[Mr. Watermeyer.]—I certainly object to the calling of any witness for the purpose of showing that there was a possibility or impossibility of drilling or tampering, or anything of the kind. These witnesses stand on their own merits. Certainly, it is an extraordinary thing to put convicts for life into the box at all.

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[Chief Justice.]—Is it an extraordinary thing to put accomplices into the box? It is done every day, at every sessions.

[Mr. Watermeyer.]—All I would say is, that these men want no bolstering up at the present moment.

[Chief Justice.]—The Attorney-General has a right to protect his witnesses. If a question is put to Mr. Bain that is incompetent, I shall stop his answer. When I hear Mr. Watermeyer only put one question in cross-examination,—"You are a convict for life," I think it is the more necessary it should be shown that they have perjured themselves if perjured they are, without an opportunity of conspiring together for the purpose. When I spoke of this being an extraordinary case,—which might have been spared perhaps,—I look at the fact that it is not a single act of treason, but connected with the acts of a body of rebels. It is a most extraordinary case. I am surprised more every hour that the court-martial did not take it, for if ever there was a case for a court-martial it is this. But here we are and here he is, and we are bound to take it.

James Bain, called.—I am son of the superintendent at Bain's Kloof. I am superintendent of the convicts at Breede River station. I know the convicts Hans Groepe, Arend April, and Hermanus Lotz. Piet Bantam did not come from my station, but the other three are under my charge. I told them they were to come here. I got orders from the visiting magistrate, and upon this I sent them. My orders were first to inquire whether any of them knew of Botha's movements at the commencement of the war. Lotz was the first man that I examined.

[Attorney-General.]—Did you hold out any hope or any inducement, or threat to him?—None whatever.

[Chief Justice.]—To induce him to do what?

[Attorney-General.]—No, my lord, I said did you hold out any inducement or threat?

[Chief Justice.]—Did you mean that he voluntarily said what he said?—Yes.

I understand that you did ask him questions?—Yes.

[Attorney-General.]—What questions did you ask?

[Chief Justice.]—Oh no, it is not necessary to put that.

[Attorney-General.]—Very well.

Whom did you next ask?—The next man that I asked was Hendrik Smith, but he could say nothing. The other two were examined by the visiting magistrate, and also Arend April, in my presence.

[Attorney-General.]—Your lordship will feel, I am sure, that this is not to set up the evidence of these men, but to show, not that they may not have some natural hopes, but that nothing of the kind was held out to them.

[Chief Justice.]—It is in that way only I have taken it, and therefore I consider that there should only be such questions put as will show that an ordinary course was taken.

[Attorney-General.]—Well, Mr. Bain, do you know of any inducement or threat being held out to these men in consequence of the story they were to tell?—I know of none.

Do you know whether a letter of mine was transmitted to the visiting magistrate for his guidance?—Yes, he handed it over to me for my guidance in the inquiry.

The Attorney-General said that letter would speak for itself, and closed his case.

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Mr. Watermeyer said,—May it please your lordship, gentlemen of the jury,—In accordance with the rule of this court, mentioned by the Attorney-General in his opening address, I shall proceed to state, as briefly as possible, the facts which it is my duty to prove, and which I expect I shall be able to prove in this case. I shall take these charges in the order of the indictment, and tell you what I expect to prove with regard to each of them, and then, generally, what I expect to prove with respect to the conduct of the defendant in this unhappy rebellion. In respect of the first charge, upon which you have heard the evidence of Nani, Byosi, and Klaas Mafee, I shall produce persons who were present when the horses were taken from these Fingoes, and I shall prove to you most satisfactorily, without a doubt, that Botha had not the slightest connection with the plundering of these men, although he was present that morning at Fort Armstrong. With respect to the second count, I shall prove to you that on the 23rd of January, the day of the plundering of the three horses, Botha was at Philipton at the moment when the circumstance occurred, that during the whole of that proceeding he was not present at Fort Armstrong, and that what has been stated by the Fingoes must have been either the grossest error or the grossest perjury. With respect to the third count, I do not know whether it is necessary to call any evidence, for on that count there has been but one witness examined,—that poor man Jacob Nieuwveld,—on whose unsupported testimony Botha is accused of holding some communication with Uithaalder near Lushington. I shall prove that at that date Botha was not, and could not have been at Lushington. On the fourth count, which my learned friend has called the cardinal point in this indictment, I shall prove to you that on the morning of that day, Botha was at Philipton; that he did go out, and at a considerable distance possibly see what was going on at Balfour; but that he was not, and could not have been at Balfour. With regard to what my learned friend stated that immediately after that fight Botha left Philipton and was not seen for a considerable period, I shall prove that he was at Philipton on that day, and the day after that, and the day after that, and that he left Philipton on the morning of the following day when Gen. Somerset arrived with the Fingoes and burghers of Fort Beaufort. I shall prove to you, in as far as it is possible to expect that it can be proved of any man, the position of Botha on each of the days, until he was delivered, or rather delivered himself, up at Eland's Post. I shall prove to you, on the fifth count, that on the day on which it is alleged that he was at Van Beulen's Hoek, communicating with the rebels, Botha was at Philipton; and with regard to the alleged admission before the magistrate, I shall prove that Botha or Fister, or both, mistook the day, and at the time spoken of, Botha was actually in Philipton. I shall prove to you, on the sixth count, which rests entirely on the evidence of persons who, knowing nothing and seeing nothing of the fact, have appeared to prove that Botha acknowledged being present, that he was not at Lushington that day. And, generally, I shall prove to you that during this rebellion, Botha has been repeatedly with the missionaries and others to the rebel camp for the purpose of reclaiming them, and has done the utmost that

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man could do for this purpose; but neither by word nor deed has he mixed himself up with the rebellion. With regard to the time when he absented himself, I shall prove that, when he and other loyal men escorted Mr. Wienand to Fort Beaufort, they were treated in such a manner by the Fort Beaufort people, that Botha's life was not safe, the hostility of the Fingoes and English being chiefly directed against him: I shall prove also that he had stated to Fourie repeatedly, that if the General came to Philipton with the Fort Beaufort people he would go out of the way, but if he came with the Cape Corps and other military, he would remain. On the General's arriving with these men, therefore, I shall prove that he staid near Philipton communicating with persons there the whole time, and that in two or three days he gave himself up to the General. I do not go further, or I would go beyond the rule of the court. I simply state these facts, and call the witnesses.

JAN FOURIE called and examined.

[By Mr. Watermeyer.]—I am the son of Field-commandant Fourie. Before the commencement of the rebellion, I resided at Readsdale, at the Kat River. I know Andries Botha, the field-cornet, and have known him for the last eighteen years. I went to Fort Armstrong on the morning after the English had gone from there to Whittlesea. I remember seven Fingo post-riders coming there, to the best of my recollection, about half an hour after they arrived. I think it was about nine or ten o'clock in the morning. I saw their horses taken from them. Two men stood forward among those who took them away. They were Hermanus Lotz and Hans Groepe. I assisted one of the Fingoes, named Byosi. The first thing I heard was that the people asked these Fingoes where were the horses with which they had gone away? The owners did not receive a satisfactory reply, upon which they said to the Fingoes, if the case is thus, we must take these horses instead of our horses. Lotz and Groepe said this, and others, whose names I forget. I conclude from this that they were the owners of the horses. Each took one horse. The others were plundered by other men. I say plundered, because I thought it would have been better for the proprietors of the horses to have claimed them from the Government. I took from one of the plunderers the horse he had taken from the Fingo, and a gun, which I gave to my father, as field-commandant. I saw Botha at Fort Armstrong that morning. I saw him at a distance from us when they were taking the horses. He was standing with the Rev. Mr. Thomson, Mr. Read, sr., and Commandant Groepe. It is more than I know that the Hottentots about Byosi threatened to shoot him. I saw the people who were actively engaged in the violence. Botha was not among them: he was standing with the people I have just mentioned. I took the gun and horse to my father at Philipton, where I went in about an hour or an hour and a half after the Fingo business. I saw Botha again that afternoon at Philipton, along with old Mr. Read and young Mr. Read. I saw them come together from Fort Armstrong. It was near sundown when they came in. I did not then speak to Botha. I saw him again next morning; he came to my father's house about sunrise, at the time we

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take coffee, and drank coffee with us. Andries Hatta also took coffee with us that morning. I heard of the robbery of the three Fingoes' horses that same morning. Christian Zeeland brought the report to my father while we were taking coffee. The same parties just named by me were then together. Botha was present when the news was brought in. This was about nine o'clock. The party remained together a considerable time. I remember when the magistrate went to Fort Beaufort. From the time that Zeeland brought this news to the time the magistrate went to Fort Beaufort, Botha was living at Philipton. I accompanied the magistrate to Fort Beaufort with the escort. Botha was one of the escort. When we got near Fort Beaufort, we halted at the drift at the place called Adam's Bush, and sent in a messenger to ask Col. Sutton whether we might come in. He said we might, and he appointed us a place to off-saddle at the Cape Corps stables, and told us we might stay there. We intended to stay there because it was late, but there was an uproar among the Fingoes, and some of the English were against us. When I and the field-cornet went to get our rations a man came who threatened to shoot Peffer. The Rev. Mr. Ayliff was there, and he separated them. I then went to Col. Sutton, and reported what had happened, and he went out himself to inspect. When he returned, he told Mr. Thomson and Mr. Read that it would be better for us to leave. The Fingoes were all armed. There were at least 150. There were strong expressions against Botha; they pointed to him and to a yellow handkerchief round his neck, and said, that he was among those who attacked Fort Beaufort. There were some English there among them. Some were armed, but the most were unarmed. All the Fingoes had guns, as it is the custom to carry both guns and assegais also. I do not know if the guns were loaded. On Col. Sutton's advice we left the place. He sent a few Cape Corps men and about thirty English with us, who escorted us out of the place a good hour's distance. We proceeded half way that night, and next morning we got to Philipton. Botha continued to live after that at Philipton. I remember the day of the Balfour fight. I saw Botha that day between 10 and 11 o'clock at Philipton. It was on a Saturday. I saw Botha again in the course of that day. The next day I went with the Rev. Mr. Van Rooyen to Eland's Post to preach there, and returned in the evening late. I did not see Botha. I saw him next morning, on the Monday, and saw him during that day several times. I cannot recollect whether I saw him on the Tuesday. I recollect Gen. Somerset coming there, but I don't remember the day or date. I remember Botha giving a message to my father to give to General Somerset. I was present. Botha told my father to tell the General if he saw him, that if he came with the Cape Corps he would remain, but if the Fingoes and civilians came he would go into the bush. My father gave him no answer in my presence, for I left them. I had some business with my horses. I have accompanied my father and the Rev. Mr. Read to the rebel camp three times.

[Chief Justice.]—How long was it before General Somerset came that your father got that message from Botha?—It was the evening before General Somerset's arrival at Fort

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Armstrong. It was Friday evening. Botha said this to my father on several occasions.

[Chief Justice.]—After he had been to Fort Beaufort with Mr. Wienand?—Yes.

[Mr. Watermeyer.]—Did Botha accompany you when you visited the rebel camp?—Yes, all three times.

Did you hear Botha say anything on these occasions?—Yes; on one occasion I heard him speak to the rebels. He asked a man named Spielman Kieviet, who is still in the mountains, whether they had told any of our great men of the evil they were engaged in, meaning evils of the rebellion in which they were constantly engaged. All the people stood round. Botha addressed Spielman Kieviet with Uithaalder, because they were the heads of the rebellion. What he said could be heard by the people. This was the same day the proclamation of the Governor was read to the rebels.

What do you think Botha meant—that they should go on with the rebellion or not?

[Chief Justice].—He has given us the words, and are you to put an explanation to him. It is neither one thing nor other at present; it is milk and water. It is not for him to answer what Botha thought.

[Chief Justice.]—But is this all he said?—He told the people they were doing wrong.

And so did Mr. Read and others?—Yes.

[Mr. Watermeyer.]—Did you hear Botha speak on the other two occasions?—I cannot remember.

When you saw Botha at Philipton on the 22nd, was the firing still going on?—Yes, they were still busy firing.

[The Attorney-General.]—How long have you been in Cape Town now?—Since the 9th of April.

Who came with you?—My father, Zeeland, and Hatta.

By way of Algoa Bay, and on board the *Megæra*?—Yes.

Did Mr. James Read come with you?—I heard at the Bay that Mr. James Read had gone before us.

Then you found him here when you came?—Yes.

What other witnesses did you find on your arrival?—I met with the Fingoes that were here, and some Hottentots also.

Name the Hottentots if you can?—One is Jordaan, the other is Groepe.

You take great interest in the case?—I take a great deal of notice in rebellion, of the harm that is done.

[Chief Justice].—That is not an answer. Nobody asked you a general question. Do you take great interest in this case? Naturally.

Why?—I cannot say, except that I have come a long way, and it is natural to think a great deal of what you are engaged in.

If you are well paid for it?—That I shall see.

You are doing yourself no good, or the cause either in which you take so much interest.

[Attorney-General.]—You know that the witnesses for Botha have been very much together, and have talked a great deal about this case?—They live together except two.

Who are they?—Groepe and Jordaan.

[Chief Justice.]—Who is supporting Botha's witnesses?—As far as I know I come to the Attorney-General for money.

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[Attorney-General.]—I have made advances to these men out of my private means to be re-paid when they are allowed their expenses.

[Chief Justice.]—I was not aware of that; I expected a very different answer.

[Attorney-General.]—There is a peculiarity in the law of this colony which causes a difficulty in some cases. On one occasion, Mr. Justice Menzies surcharged Mr. Eaton with some £30 or £40 for expenses incurred by his summoning witnesses whose evidence was found not to be material. In this case, I have summoned every person who was named to me on the part of the prisoner, taking an engagement from his attorneys that if material evidence is not given by any of them, the expenses shall be borne by his friends.

[Chief Justice.]—You do not mean that Mr. Eaton paid that money?

[Attorney-General.]—On my representations he was relieved.

[Chief Justice.]—I thought it was blank cartridge, and that Mr. Menzies was not likely to enforce it. I am aware that there was a practice of bringing whatever witness a prisoner might wish to have summoned, without reference to whether his evidence was material,—to say if he had read about the flood, or about the sun, moon, and seven stars. I considered, however, that the clerk of the peace was not the man to judge as to the witnesses, but the magistrate; and that where he thought a witness material, the clerk of the peace should merely execute the process. However, I only asked the question in consequence of what you said about the witnesses being together. It was the course that you took that led me to this.

[Attorney-General.]—Well, Fourie, you were at Fort Armstrong on the day when Uithaalder's commando came?—I arrived there a little before they came.

Where did you come from?—From Philipton.

In the evening of the next day the English went away?—Yes.

Were you there when the English left?—No, I had returned.

When did you visit Fort Armstrong next?—The next morning after the English left.

Then, do you know that after the English left all was confusion, and that the rebels did what they liked?—I did not know to that extent; for there were some of the loyalists still there, and the families of the English.

Was that the morning the news arrived of the shooting of the Hottentots at the Mancazana?—I think that was the morning before.

Was not the intelligence from the Mancazana and of Uithaalder's visit the cause that everything was thrown into confusion?—I cannot say; but I heard some say that that was the cause of the uproar.

[Chief Justice.]—Whatever was the cause, there was an uproar?—Yes.

[Attorney-General.]—Amongst the Hottentots at Fort Armstrong, was there a great hatred to the Fingoes?—Yes.

Will you swear that on the morning when the seven Fingoes came there, those men were not in great danger of their lives?—I cannot swear that they were in great danger of their lives.

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Or that they were in great fear of bodily harm?—That I could see by the Fingoes, that they were in great terror.

[Chief Justice.]—What was the terror from?—From the taking of the horses, and the people speaking roughly to them.

[Attorney-General.]—Were the men who spoke so roughly armed men?—They were not.

Do you say that there were not armed men in Fort Armstrong that day?—I will not swear that; but I did not see a single man that day with a gun, except the man who took the gun from the Fingo.

Did you see the guns taken from them?—I did not see the guns taken, except from one Fingo, Byosi.

Then you do not know who took the guns away from the rest?—I did not see it.

How many of the horses did you see taken from them?—I saw all the horses taken from them.

Tell me how can you only remember Marthinus Groepe and Lotz, and the other men you cannot recollect who took the horses?—The reason that I remember particularly about Lotz is that I had been speaking to him.

[Chief Justice.]—You are not asked why you remember Lotz, but why you do not remember any other?—I do not remember them. The horses were taken away, but they had their guns,

[Attorney-General.]—Then where did you go that you did not see the guns taken also?—I went off a little way to the shop of Mr. John Green.

Then a good deal might have happened to those Fingoes that you did not see?—What is done in my absence, that I cannot account for. I am sworn to speak the truth.

[Chief Justice.]—I hope you will do that; but you are rather flippant. Answer civilly and short, or else you will not serve the cause you came for. I don't like your manner at all, I tell you. The jury may form their own judgment,—I mean of the manner of the witness.

[Attorney-General.]—Did you see Willem Brass there?—No, I did not.

You cannot swear that he was not there?—No, that I cannot.

You know Mrs. Arnold and Eva?—Yes.

Do you not recollect that these two women beseeched you to go and save the lives of those Fingoes?—I do not remember.

Do you recollect whether any two women interfered to save the Fingoes?—No.

You say you saw Mr. Thomson, Groepe, and Botha together?—Yes.

Was that the first time you saw Botha?—Yes.

Where were the Fingoes then?—The Fingoes were past the shop of Mr. James Green.

How far was James Green's shop from the place where Messrs. Thomson, Groepe, and Botha were standing?—I think thirty yards.

You have mentioned the number of people you saw at Fort Beaufort: tell us how many people there were at Fort Armstrong that morning who made an uproar?—I think about forty men.

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Will you swear that there were not more?—I will not swear, for I did not count them.

Was your father there that morning?—No.

Did you see anybody interfere with what was going on amongst the Fingoes but yourself?—There were many people; I can only name one man.

Then you do not mean that there might not be a great deal done by Botha and others that you did not see?—No, from the time I left I can't say what happened.

Do you know the man who took the gun?—I do not.

At that time did you see the other Fingoes?—I did not see the other Fingoes at that time.

Where were they?—They were still at the place where the horses had been taken from them.

How far was this from the place where you took Byosi's gun?—About forty yards.

And there were other people between?—Yes.

Then how could you see where Botha was?—As I was coming up from the shop, I saw where the gun was taken from Byosi, and I could also see where Botha was standing.

Do you think, then, that where Thomson, Groepe, and Botha were standing, they could see what was done to the Fingoes?—Yes, on the level they were, they could see.

Then Groepe, Thomson, and Read could see the guns taken away?—I do not say that they did see it, but they could have seen it.

Lotz and Hans Groepe, you say, were owners of two of the horses which the Fingoes left at Fort Beaufort?—So I understood them.

How do you mean to convey to the jury that no men took horses that day but those who claimed to be owners of them?—That I cannot say.

[Chief Justice.]—Is it admitted that the seven Fingoes got back their horses?

[Attorney-General.]—No, they made their escape through the back.

[Mr. Watermeyer.]—One horse was taken by Fourie to Philipton.

[Chief Justice.]—Did the Fingo get it back?

[Mr. Watermeyer.]—It was given up to Col. Sutton, it was a government horse.

[Attorney-General.]—Did anybody claim to own the guns?—That I did not hear.

On the following day, you say, Andries Botha came to drink coffee?—Yes.

Was he not in the habit of coming often to drink coffee with his old friend, your father?—Yes.

Then how came you to recollect this particular time?—Because we were all present that morning.

All the persons you have named are now in Cape Town?—Yes.

When did you first hear that Andries Botha was charged with regard to the three Fingoes and their horses?—I cannot say when, exactly, but I think it was when he was in Fort Hare in prison.

That was better than a month after the thing took place?—I cannot say how long exactly, but it must be more than a month.

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How came you then to remember, a month or six weeks after the circumstance took place, as Botha often took coffee with your father, that he had taken coffee with him on that particular morning?—It was as clear as daylight before me then.

[Chief Justice.]—Perhaps the jury might want to know what sort of a light your daylight is. It might not be sunlight. That is no answer.

[Attorney-General.]—When Zeeland came that morning from Fort Armstrong he said that three Fingoes had arrived there, and that their horses had been taken away. What did Botha say?—He and my father were very much astonished at it.

But seven Fingoes had had their horses and guns taken away the day before, what was there in the same thing happening to three to create astonishment?—But if every day brings forth new evils, it is enough to make any person take it to heart, even if he is not concerned in it.

[Chief Justice.]—I wish I could write short hand! Sir, you give no answer to the question. You give a reason, and a false one, and you are asked as to a fact.

[Mr. Watermeyer.]—I am afraid that your lordship does not understand this witness,—does not understand his manner,—and that you have taken some prejudice against him, which I believe is really unfounded. He cannot be expected to deliver an essay, to speak didactically, on a subject like this.

[Chief Justice.]—He speaks extremely well for the purpose!

[Attorney-General.]—I understand you to say, Fourie, that Botha expressed great indignation at the intelligence?—He was dissatisfied; he thought a great deal of it.

Chief Justice.—Now, is that an answer I can take down? He evades the answer about indignation, and says something else. Let him say the same word, yes or no.

[Mr. Watermeyer.]—He cannot make philological distinctions.

[Chief Justice.]—He is more logical than I wish him to be! Let him discard logic, and state facts.

[Attorney-General.]—(To the witness).—Did you mean to say that Botha expressed great indignation?—Yes.

I believe that Botha is a brave and forward man in action?—Yes, as far as I know him.

Now, do you know, as he was so angry about what happened to the three Fingoes in his absence, why did he not interfere with what happened to the seven Fingoes in his presence? That, I cannot say.

How many people formed the escort of Mr. Wienand at Fort Beaufort?—I think there were about thirty men including the four field-cornets.

Did Mr. Wienand see those people that you spoke of in the uproar?—That I cannot say, for we dispersed.

Did you see a gun pointed at Botha?—No.

As the escort was leaving with Col. Sutton did Botha say that any one had offered to shoot him?—I heard it said on the road that somebody had fired a shot at him.

Was this before or after Col. Sutton had left you?—After he had turned back.

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Upon your oath, Fourie, do you believe him, that any shot was fired at him?—That I cannot say; but as far as I am concerned I did not hear it, much less see it.

My question is simply this; as Fort Beaufort is a small place, do you believe that a shot was fired there?—I did not hear it.

When you rode with Col. Sutton was there a shot fired?—I cannot say, because we got dispersed.

But I suppose you came in a body out of Fort Beaufort where there was danger?—Yes.

Well, as long as you were in a clump, was there a shot fired?—No.

After the clump divided did you separate from Botha?—Yes.

To what distance at the greatest?—That I cannot say.

Do you believe that Botha was ever so far from you that you would not have heard a shot fired at him?—There was a noise made by the horses for we were chased (gejaagd), and I was behind, so that a shot might have been fired without my hearing it.

Did you afterwards often hear Botha speaking of it?—Yes.

Now upon your oath, Mr. Fourie, was not Botha's feeling anger and not fear?—I cannot say whether his feeling was anger or not.

Can you speak Kafir?—A little.

Can Botha speak Kafir?—Yes, I have heard him.

[Chief Justice.]—Is he a better Kafir scholar than you?—I am not a Kafir scholar. I only speak a word here and there.

[Attorney-General.]—The Ghonas in his field-cornetcy speak Kafir to him and he to them?—Yes. The Ghonas generally speak Kafir and Dutch indifferently.

[Chief Justice.]—You see he has not answered the question a bit.

[Mr. Watermeyer.]—Yes, my lord.

[Chief Justice.]—No, sir, no, don't contradict! I say he has not answered the question.

[Mr. Watermeyer.]—He said they spoke Kafir and Dutch indifferently.

[Chief Justice.]—That is no answer. Let me have an answer, Fourie. Do you not know that Botha speaks Kafir to the Ghonas?—Yes.

Now he may add that the Ghonas speak Kafir and Dutch indifferently, or anything he likes. It is as if I were taking a wrong exception to the answer that was not warranted. I think it was warranted, and I must judge for myself. I cannot allow you or any counsel at the bar to contradict me!

[Attorney-General.]—The day of the Balfour fight you were at Philipton?—Yes.

And you say you saw Botha there that day between 10 and 11 o'clock. Have you any way of fixing the time? Might it not be a little later, between 11 and 12?—I had my watch, by which I can see what it is o'clock.

[Chief Justice.]—There you see is a constructive answer. It is no answer. It is my duty to see that the witness answers the question directly, if he does not it is my duty to see that he does, and not put on my notes as an answer that which is none. He has said that he saw Botha between 10 and 11 o'clock. He is asked if he had any means of fixing

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the time? He answers that he has a watch, and can see what it is o'clock. But the question is still unanswered; it is avoided.

[Mr. Watermeyer.]—I do not wish to interrupt your lordship, but as I understood it was the general question. Have you any means of ascertaining the time? and he gives the general answer, I have a watch.

[Attorney-General.]—It may have been that my question was not sufficiently explicit. I wish to know, might it not have been later than 10 or 11?—That is why I say to the best of my belief.

Where did you see Botha?—I cannot say at what house, but it was in the place.

Had you any conversation?—Yes, I spoke to him.

About what?—We spoke about that my father had gone to the General to meet him.

Well, what did you say more?—And then we talked about the firing; that we did not know what so much firing was for.

Nothing else?—I cannot remember anything more.

Then Botha did not tell you that he had been upon the heights to see the firing that morning?—No, I heard nothing about that from him.

Nor anything about winning a yellow horse?—No, from him I heard nothing of that.

You and he spoke wondering what the firing was about?—Yes.

Then you did not know at that time who was firing?—No, I did not know.

And Botha did not tell you?—No.

He spoke like yourself as if he did not know what it was all about?—Yes.

You say you saw him again that day?—Yes.

What time was that?—I cannot say.

Did you say anything to him?—No.

How do you recollect that you saw him?—Because I saw him.

Where was he then?—He was in the place a little way from the shop of a man named Petrus Reading.

Was anybody with him?—I cannot recollect if anybody was with him.

On the morning of the fight at Balfour did you know that Stoffel Botha was at Philipton?—I cannot say whether he was in Philipton on that day.

Chief Justice here said, he felt it his duty to inform the jury that it is a principle of law as well as practice that in proofs of *alibi* the evidence should be precise and satisfactory; that there should be no interval or gap; and that if there be the least want of continuity in respect of proof the plea of *alibi* cannot be sustained. He made this suggestion that the jury might take the opportunity of putting any questions to the witness which they might consider necessary to satisfy them on this point. He did not give them this as his advice, but as a conclusion of law which it was his duty to lay before them.

[Attorney-General.]—I was asking, Mr. Fourie, do you know that Stoffel Botha, the wounded son, was living at Philipton for some time before that day?—Yes, but that he was there on any part of the day I cannot swear.

Did you see him after that day?—No.

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By whom did he live at Philipton?—He had a house on the other side of the river.

Was it his own house?—No, he lived with other people.

With whom?—(No answer).

It is not material.

[Chief Justice.]—I did not think you would ask a question that was not material.

[Attorney-General.]—A thing may be material in one sense and not in another; I did not know that he was not living with his father.

[Chief Justice.]—I am satisfied.

[Attorney-General.]—Were you aware that Gen. Somerset was advancing?—I did not know.

And his arrival was the first notice you had of it at Philipton?—Yes, a long time before we heard that he was coming, but we heard again that he turned back at the Chumie; but the second time we had not heard of his coming.

Now, you said that the message that Botha gave to your father was given several days before the General's coming?—Yes.

How could Botha give such a message, when it was not known in Philipton that the General was coming?—As I said before, Botha did not say that word once to my father, but he had often said it, and when we heard that the General was coming, Botha had already been speaking to my father about it.

How long was it before he did come?—That I cannot say.

Could it be a month?—No, less than a month.

Do you say that Botha gave the message to your father for the General with regard to his first coming?—As I said before, Botha did not say this once but several times.

You have sworn that you heard your father get the message from Botha on the Friday before the General came: was that Friday the Friday before Fort Armstrong was stormed?—Yes.

[Mr. Watermeyer.]—Did your father go to meet the General on a Saturday?—Yes.

[Attorney-General.]—Where to?—To Fort Armstrong.

You have said just now that you did not know that the General was coming?—If you go a mile from Philipton you can see troops advancing from Fort Armstrong.

And it was when the General was seen approaching that your father went?—Yes.

Now, I ask you on your solemn oath if your father had any intention to go until he saw Gen. Somerset coming?—That I cannot say.

Did you see Gen. Somerset coming on the Friday?—No.

Did you see him come on the Saturday?—Yes.

I want to know, unless Botha were a prophet and your father were a prophet, how Botha could give that message to your father on the Friday to be delivered to Gen. Somerset, when it was not known in Philipton, until Saturday, that Gen. Somerset was coming at all?—I have said, and I cannot say otherwise, that Botha had given that message, not on one occasion, but on several occasions.

But do you still adhere to what you swore, he gave it to him on the Friday?—Yes, the evening of the Friday before Gen. Somerset went to Fort Armstrong. I have said it before, and I cannot say otherwise.

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Who was present besides yourself and your father?—That I don't remember.

[Chief Justice.]—Or if there was anybody present?—No.

[Attorney-General.]—Where was he when he gave you this message, inside or outside of the house?—He was outside of my father's house, before the door.

And the message was to tell the General that if he came with the Cape Corps he would remain, but if he came with the English of Fort Beaufort and the Fingoes, he would go into the bush?—Yes.

Did not your father, and you, and Botha know that Philipton was one of the places where loyalists were ordered to remain?—Yes.

Did your father not say to Botha, "Old friend, you are mad?"—Sir, we all did that, my father did that, not once but many times; but we could not dissuade him after the shooting at Fort Beaufort.

Is Botha not as brave a man as any in the whole escort in battle?—Yes, he is a brave man, sir.

Answer the question. Was he not as brave a man as any in the whole escort?—Yes, he was.

How came he to be the only man that was afraid?

[Mr. Watermeyer.]—When I put such questions, my learned friend says it is a judgment and not a question.

[Chief Justice.]—If you appeal to me, I do not think it is a question: it is reasoning.

[Attorney-General.]—Well, do you know of any other man going into the bush through fear?—No.

When did you leave Philipton, after the storming of Fort Armstrong, not to return?—When the General came to Philipton.

Where did you go?—I went to Eland's Post with the General.

How far is Eland's Post from Philipton?—I should say about three quarters of an hour.

[Mr. Watermeyer.]—Do you think that Botha was an object of real hatred to the Fingoes?

[Attorney-General.]—Now, do not lead your witness on the cross-examination.

[Chief Justice.]—I do not think it can affect the jury to know what this man thinks. If I have to put the question, I will have to go through the whole campaign again.

[Mr. Watermeyer.]—Well, let the jury answer it.

[Chief Justice.]—I am telling them to judge all the time. I cannot get a direct answer to any question from the witness. Whether it is that he cannot understand, or I cannot put questions, I am bound to state, that I have no satisfaction in my mind from any explanation he has given me,—none at all; I hope the jury have. If, however, there is any question I can put for you that will remove the obscurity of his evidence, I am ready in a moment to retract, and say that I have found daylight, if I really have.

[Adjourned.]

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MONDAY, 17TH MAY, 1852.

JAN FOURIE recalled.

The Chief Justice said,—I stated on Saturday with regard to this witness, that I was dissatisfied with the manner rather than the matter of his evidence. I am told that this may have arisen from the circumstance that the witness understands English, and catches up the question as given in English, while he replies in Dutch through the interpreter. This may be the case, and may have led to the impression in my mind that he was not so straightforward as a man of truth ought to be. If the witness, therefore, would prefer to reply in English, he may do so.

The witness said he understood English, but not all the words; he therefore preferred to speak in Dutch.

[Re-examined by Mr. Watermeyer.]—I remember when I went to live with the General at Eland's Post. I cannot say for certain what day of the week it was. It might have been on Wednesday or Thursday. I remember when Botha came to Eland's Post. I cannot say whether anybody came with him. He had already arrived when I saw him, and came to my father's house. As well as I remember, he came there on a Saturday evening. On the Saturday following my arrival. The General had left for Lushington. He had gone with his whole force, because he was on his way to Fort Hare. I saw Botha next day. We went with him to the General on Sunday. He was desirous of seeing the General. He went with an escort. I was one of the party, with Rensburg and others. I do not recollect the whole party; John Thomson, son of the Rev. Mr. Thomson, was one. When we got half-way to Lushington we saw that the camp had removed, so we returned with Botha to Eland's Post. When we came to a rising ground we could see that the camp was removed. The rising ground where we could see the camp is opposite Eckardt's place. The same day we took Botha from Eland's Post to Fort Hare. I was one of the escort; Zeeland was there and a whole party. I cannot remember if Mr. James Read was with us. When we came to Fort Hare, Botha was given over to the authorities. Botha had not been imprisoned at Eland's Post. I cannot say if his gun was taken from him.

[Cross-examined again by the Attorney-General.]—You think that Botha came to Eland's Post on a Saturday; would you undertake to swear that it was the next Saturday after the General left, and not the Saturday the week afterwards?—I cannot swear, but to the best of my recollection it was the Saturday after the General left.

Captain Fisher was in command of Eland's Post when he came?—He was.

Don't you know that Botha was brought in as a prisoner by your father and Peffer, to Captain Fisher?—I cannot say that he was brought as a prisoner, but he was brought as a man who was not at Philipton when the General was there.

Don't you know that the orders of the field-cornets and field-commandants were, that every man who ought to have been at Philipton, and was not there, was to be made a

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prisoner?—I know that all parties that came in afterwards were to be brought up to the commander.

[Chief Justice.]—Now, that is no answer for me. Man, it is no answer,—it is *alio intuitu*. Do you not know that there was an order to take such parties prisoners?—Yes, that was the order.

Could you not say so at first? You are a man of intelligence, and must know that you did not answer the question the first time.

[Attorney-General.]—You say that you, and Rensburg, and others were taking Botha over towards Lushington, supposing that the General was there. How long was this after he came in?—I was ordered out by Captain Fisher.

[Chief Justice.]—Again, that is no answer. Did the party take him as a prisoner?—We were ordered out to escort him, but whether he went as a prisoner I do not know.

As he had been brought into custody the day before, why do you doubt that the next he was still a prisoner?

[Attorney-General.]—Would you have let him go away if he had wished?—I would not have allowed him.

Into whose charge was he given as the commander of the escort?—I cannot say.

Was there any head of the party?—I am not certain who was the head of the party, but I think it was George Higgs, of Wynberg.

[Chief Justice.]—In what capacity did you go?—I was doing duty as a burgher.

Do you know where Mr. Higgs is now?—I cannot say, I have not seen him on the frontier lately.

[Attorney-General.]—You have said that Botha came to your father's house at Eland's Post. Had you a house or a wagon?—We had a house.

[Mr. Watermeyer.]—Was Botha handcuffed?—Not that I saw.

[Attorney-General.]—Were those prisoners who were brought in under the order handcuffed?—Not a single one was handcuffed.

With regard to the message with which Botha charged your father to deliver to the General in reference to Botha's going into the bush, you do not doubt that your father delivered it?—I was told that my father delivered it, and I do not doubt that he did.

[Chief Justice.]—I want you to recollect where you and Botha were when he first delivered this message. Try to recollect it?—He said it so frequently that I cannot recollect where, or when, he said it the first time.

When you say frequently, you do not mean frequently the same day but on several days?—Several times on several days.

Am I to understand that he mentioned the message so frequently to you personally or to your father?—Not personally to me, but to my father, sometimes in my presence.

Now "sometimes" is not a direct answer; you said that frequently in your presence he told it to your father?—Yes.

Then you don't mean that he twice told it to you when your father knew it?—He told me more than twice.

That may be twenty times? Can you give me any reason

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why he should repeat it frequently to you or to your father? What was the need of repeating it so often?—I cannot say why it was, but he did repeat it.

I think I understood you to say in your examination that you did not know that Gen. Somerset was coming to Philipton, until you saw him on the way the second time?—I did not know.

And your father did not know, for you told me that he went out to meet him?—That was when we saw him coming.

You had at one time expected the General to come, but he had gone another way, and you did not expect him at all until he did come?—Yes.

Now charge your memory. What time passed between your first expecting the General and his actually coming?—As I told your lordship, on Saturday, I cannot remember.

I should think it rather a circumstance likely to strike one, but I only want an answer one way or the other. Do you think it was a day, or a week, or a month?—I don't think it was a month, but I cannot say how long.

Can you tell us why Botha gave the message to you at a time when the General was not at all expected to come to Philipton?—I cannot say.

You do not know what became of Botha when he went into the bush?—No.

You do not know how he was fed?—No.

You never saw him?—No.

With regard to the seven Fingoes, I think you stated that you had only been in Fort Armstrong half an hour when you saw the Fingoes in the square with the Hottentots?—Yes.

Where had you come from?—From Philipton.

And I think you said that when you had taken the horse from one of the Hottentots you were there only half an hour when you went off with it to Fourie at Philipton?—An hour or an hour and a half.

This is merely to confirm the note which I have taken.

Frederick Jordaan called and examined.

[By Mr. Watermeyer.]—Before the outbreak of the rebellion I resided at Balfour. After that I went to Fort Armstrong. I was there the day three horses were taken from three Fingoes. I know Andries Botha well. On the day when the three horses were taken, early in the morning, when I got up, I saw a yellow horse standing before the door of Willem Brass, and a lot of men standing at the same place. I went up to them, and heard Willem Brass ask the Fingo where he had come from. The Fingo told him he had come from Mr. Joseph Read. I know the Fingo Keetel, I have heard him called by the name of Boko. Willem Brass told him that it was not true that he came from Joseph Read's. This was all spoken in the Kafir language. Willem Brass asked him, "Where are you going if you come from Joseph Read's?" He could not name the right place. Willem Brass said, "You come from Fort Hare or from Fort Beaufort. I see that by your cap and your haversack, and by all those things you have about you. I see the white band on your hat; and the pouch which you have is Government property; and the bread is ration bread." Willem Brass had opened the haversack; I saw him open it; and he said, "If you don't speak the truth

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I will kill you." The Fingo said he could not say otherwise. I then said to Willem Brass, "It is not right for you to frighten the Fingo in this way, and it would be bad to kill a man whom you have in your power, in cold blood." I said it would be better for the man to go to the fire and warm himself, for it was cold. I told a woman to give him a cup of coffee. He got a cup of coffee. The Fingo saw that there was still a friend for him, and he then told me that he had come from Fort Hare. I never saw the Fingo before. He said on the other side of the river there were two more sitting and they had the letters, but he had a small letter with him. He gave that letter to Isaac Izaks. Izaks had been there the whole time. He did not give the letter to Izaks privately, but before the people outside the house. I did not see to whom the little letter was addressed. Izaks said he wanted to give the letter to Mr. Thomson, for Mr. Thomson came there to ask if they had any letters, and Izaks took the letter away. I showed the Fingo where the house of commandant Groepe was. I saw with my own eyes Willem Brass take the Fingo's gun. The haversack, the gun, &c., were lying outside the house. Brass said, "give me the gun and the things" in a commanding manner. All this was said in the Kafir language. I translated what was said to Izaks in Dutch, because Izaks did not understand what the man said, and wanted to know it. I translated what was said at the time they were talking. I did not see Botha there all that time. When I was there he was not there. As far as my sight went he was not there. The former evening I had asked where Botha was, and I was told he had left for Philipton with the clergyman. I do not know where he was that morning. He was not there during the conversation about Joseph Read, and the white bands. I saw four men cross over to the Fingoes. I went into the house, and when I came out the two Fingoes were already in the place. I am not certain, but I think Keetel had gone to Groepe's house before the other two Fingoes came. He was not there when they came. When I came to where the other two Fingoes were I did not see Botha. Christiaan Zeeland, W. Laverlot, Cornelius Ruiters, and Casper Jaagers were the four men who went to the two Fingoes. I do not know who ordered them to go. I thought they had gone of their own accord. They did not go from where I and Keetel were, they went from the lower end of the camp. I saw that Willem Brass had the yellow horse. Of the other two I saw that Christian Zeeland had one. I do not know who had the third; some one took it from the Fingo. Some time afterwards I saw Boko at Fort Hare. I saw him at different places; at Mr. Calderwood's, and near to the sun-dial at Fort Hare. I had some conversation with him near the sun-dial about the three horses. Boko spoke to me. He praised me and Commandant Groepe for having saved his life. He said Botha was a bad man. He said Botha's people had plundered him at Fort Armstrong. I told him they were not Botha's people, they were the people of Fort Armstrong. He said he thought all the Hottentots and Ghona's were under Botha, and that was why he was under the impression that Botha's people had plundered him. I then took him up to commandant Groepe to convince him that it was not as he thought.

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I told the commandant what I have said here, and he explained to Boko how business stood at the Kat River. Groepe said that Englishmen, Hottentots, and Ghonas, who lived where a field-cornet was placed, are all under the field-cornet,—not sorting them, an Englishman under this chief, and a Hottentot under that, and a Ghona under another. Boko was satisfied. Botha was at this time in the provost. I saw him at a distance there. I did not speak to him, because we were not allowed. I remember before the affair of the three horses that Mr. Macmaster's cattle had been taken away by the Kafirs,—about 70 head. I saw Botha and Macmaster's Kafir bring back the cattle to Macmaster's kraal at Fort Armstrong. I mean the 70 head. This was before the affair of the horses, and after the rebellion broke out. I remember the day when Gen. Somerset took Fort Armstrong; when there was the fight at Balfour. I saw Hermanus Lotz that morning. I saw him go about from 6 to 9 o'clock. He had his gun in his hand and his bandelier round him. He was doing nothing, for Uithaalder came and said, "What are you doing here, why are you not at Balfour fighting." I heard him say that. I remember Gen. Somerset's arrival that morning. It was about 9 o'clock when Gen. Somerset advanced from Hertzog direction. At that time it was I saw Lotz last. I do not know what became of him afterwards. I did not stay at Fort Armstrong. The Commandant sent two men to the General, and before they came up with the General they turned back; I mean the two men with the flag of truce. They came, and said there was no mercy to be obtained from the government; that they turned them off. I then got upon my horse and went to Philipton. I then saw Lotz there. I was not an hour going to Philipton. I first ascended a little height near Philipton to see what was going on. I did not speak to Lotz when I saw him. He was standing by a house. He had not his gun with him, though he had his bandelier. It was the house occupied by Christian Zeeland. I do not know whether that was the place that Lotz came to.

[Cross-examined by the Attorney-General.]—I lived at Fort Armstrong from the time the rebellion commenced. I was residing there when Uithaalder came on the 22d January, but I was out with my cattle at the time, and did not come in until midday, when he had returned to the other side of the river.

[Attorney-General.]—Were there not some people in the fort who said they would have nothing to do with either party, the English or the rebels, but would stand neuter?—I did not hear that said.

Were you armed that day yourself?—I never had a gun the whole time I was there.

Could you have obtained a gun to fight for the government if you had asked?—There were no guns.

Did you ever ask for one?—Yes.

Whom?—Mr. Wienand. We asked him when we came in together first.

[Chief Justice.]—Did you ever ask for one after that?—I did not ask.

[Attorney-General.]—Am I to understand, Jordaan, that if you had had a gun, you swear you were ready to fight against the rebels?—If orders had been given.

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[Chief Justice.]—That is fencing with a question. That is what I complain of with these witnesses. Would you have been ready to fight against the rebels if you had a gun?—Yes.

[Attorney-General.]—How long was this before the three Fingoes came?—Three or four days.

Where is Brass's house?—Near the church, a little below the plank building of Mr. Macmaster.

Where was your house?—Down below at the other side of the slaughter house, some distance from the tower.

I think you said the horse was already at Brass's door when you came from your house?—Yes.

Then you did not see who took the horse from that Fingo?—Willem Brass took the horse. The Fingo was still holding it.

Then, do you mean to say that Brass took the horse as well as the gun?—I saw Brass take the horse; he laid hold of the Fingo who was already on the ground, and talked to him. The Fingo was in a fright,—he trembled.

[Chief Justice.]—You do not answer. This is very different, I must observe, from the manner in which the Fingoes gave their evidence. When I made a remark of this kind before, the prisoner's counsel said, "My lord, my lord, leave the witness to the jury." I think it my duty to make such an observation to the jury at the time, rather than reserve it for the summing up. I consider that I have the direction of the witness here, and that I have a right to express my opinion of the manner of the witness. It may be said the judge is all against the prisoner. No, gentlemen; those who know the judge will be aware that he is only seeing that false weights are not put into the scales. It is therefore I put the question again. I think it necessary to explain this, because when I did so before, the prisoner's counsel got up and warmly objected, and I made answer, perhaps, more warmly in appearance than I meant. Now, Jordaan, you know a good deal of what I have said. Give a direct answer to the question.

[Attorney-General.]—Can you say whether the Fingo let go the reins?—When Brass took hold of him, he let go the reins.

Do not you think that these Fingoes were in danger of their lives that day?—He was afraid.

[Chief Justice.]—Now, gentlemen, was that an answer? Were all three in danger of their lives, that is the question?—Yes, I think they were in danger of their lives.

Why do you think they were in danger of their lives?—From the treatment of Brass to them.

Do you mean that Brass was to kill all three?—There were besides a lot of young men who surrounded them, and threatened to kill them.

Why did you not tell us that before?—I was not asked.

The jury will judge whether you were not asked sufficiently. I must press this a little more. Was Boko threatened to be killed?—Brass said to Boko, "If you do not tell the truth, I will kill you."

[Attorney-General.]—Did not others say that they would kill them?—There were a few who called out so also.

Had they guns with them?—No.

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Were they the same set of men who said that they would take Boko's life that threatened the others?—There were more people by the two men.

Do you mean to say that Brass was the only man who said he would kill Boko?—Brass said he would kill Boko. David Jonkers and others said so too.

Did you not hear Brass say to Boko, "You are the people that shot our friends at the Blinkwater and Fort Beaufort?"—Yes.

[Attorney-General.]—Now, you did not see the Fingo before you saw him at Brass' door?—That was the first time I saw him.

Then you say you saw Zeeland, Laverlot, Ruiters, and Jaagers cross to where the two other Fingoes were?—Yes.

Zeeland is here?—Yes.

[Chief Justice.]—He came with you?—No.

[Attorney-General.]—Where is Laverlot?—He is in the mountains with the rebels.

Ruiters was convicted of high treason at Fort Hare?—Yes.

And Jaagers, where is he?—He is amongst the rebels.

How soon after you first saw the Fingo did you see the Rev. Mr. Thomson?—Shortly; it was not long after, for he asked me whether the Fingo had any letter.

Perhaps Mr. Thomson had been there before that?—If he had been there, I would have seen him.

Did you see him?—I saw him coming.

[Chief Justice.]—Whence?—From the quarter of Groepe's house?

[Attorney-General.]—Can you say how long that was after you first saw the Fingo and Brass?—No.

Where is Brass?—He is amongst the rebels.

I think Brass rode away the same morning?—He said he had got a horse, and he could now work.

And he went to "work?"—I believe he went away.

You know that Botha came frequently before this to Fort Armstrong?—Yes, that was his habit.

Was it not his habit to go to Brass's when he came?—I don't know.

Did you never see him at Brass's house?—I do not know whether he was over in Brass's house, but I have often seen them in the street talking.

During all this time, was it known that Brass was a rebellious character?—That was the first morning that I found it out.

Was that the first morning you had any suspicion of Brass?—Yes, then I found him out.

Did you suspect him before?—

[Chief Justice.]—You are upon your oath,—do you mean to swear, before God, that up to that morning you thought he was a man who would stand by the government?—I thought so.

[Attorney-General.]—I think you will not venture to swear that Botha was not at Fort Armstrong that morning?—I cannot swear that he was not there, but I can swear that I did not see him.

Were you at Fort Armstrong the morning when something happened to seven Fingoes?—No; I met them in the drift when I was going to Philipton.

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How long before that was the affair of the three Fingoes? It was the day before.

Was Botha at Philipton that morning?—I left him at Fort Armstrong.

Did you go straight from Fort Armstrong to Philipton?—Yes.

At that conversation between you and Boko at Fort Hare, about Botha, Boko spoke to you as blaming Botha for having instigated what took place?—The men of Botha.

He said that Botha was a bad man?—Because he thought he gave the orders; he said, "Botha is a bad man; Botha's people plundered us at Fort Armstrong."

Did Boko live at the Kat River settlement before the war?—Not to my knowledge. I had never seen him in the Kat River district before that morning.

You call Botha's people, the people of the Upper Blinkwater?—Yes, and of his place.

Where were the people that you call Botha's people?—I heard that they were in rebellion at the Blinkwater.

Do you mean by Botha's men, the men of his field-cornetcy?—Yes.

How did Botha get Macmaster's cattle back from the rebels, by force or negotiation?—That I cannot say.

When did you first see the cattle come?—When Botha was driving them to Macmaster's kraal.

Do you mean that Botha alone, with the Kafir servant of Macmaster, brought in the cattle?—These two men I saw.

Were there any others?—I saw no others.

The rebels had swept them off that morning?—I do not know, but I heard so from the people.

Were Botha and the man armed when they were driving them in?—I can't remember.

And you don't know how Botha got them?—No.

Did Botha ever tell you how he got them?—No.

Do you know that Macmaster paid Botha for getting them?—I do not know.

You have not seen Macmaster in town?—No.

[Chief Justice.]—Do you know how the cattle of Macmaster were lost?—No.

Then they might have been stray cattle?—I don't know.

Who told you that the cattle were Macmaster's?—Macmaster himself told me that Botha had brought in his cattle that day. He did not know himself how they got away.

[Attorney-General.]—Before the fight at Balfour, Uithaalder was frequently in Fort Armstrong during the last fortnight?—I did not see him frequently, but his camp was near Fort Armstrong; as far as from here to the causeway (a quarter of a mile).

[Chief Justice.]—Then you saw him some days before the battle of Balfour in Fort Armstrong?—Yes.

[Attorney-General.]—And on the morning of the fight he came into Fort Armstrong and spoke to Lotz?—Yes.

You surely do not mean that he only spoke to Lotz alone, and not to the people generally; did he not ask them, "Why do you not go out and fight?"—I saw him speak to no other people.

[Chief Justice.]—Then he did not speak loud, so that all the people could hear what he said to Lotz?—He spoke loud.

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Then there was nobody near with Lotz?—Nobody was by.

[Attorney-General.]—Was the firing already begun when he spoke to Lotz?—The firing was going on.

And did you see Lotz after that?—Yes.

What answer did Lotz give?—He said, "I shan't go, I won't do it."

[Chief Justice.]—Did Uithaalder reply to this?—He said, "After I have conquered the farmers, I will come and show you Fort Armstrong people what I mean."

[Attorney-General.]—Was General Somerset's commando within sight then?—Not yet.

You went to Philipton, by what road?—The road coming from the side of Balfour.

That is not the nearest road to Philipton?—The other path is nearer.

And you say Lotz was already in Philipton when you reached it?—Yes.

Was Botha there when you came?—I did not see him there.

You know young Cobus Fourie?—Yes.

Did you see him?—No.

Where is he now?—At Eland's Post.

You did not see Botha at Philipton that Saturday, I think?—No.

Or, on the Sunday?—On the Sunday I went to the General's camp.

[Chief Justice.]—Without seeing him?—I did not see him.

Who went with you from Philipton to the General's camp?—I went with Mr. Thomson, Mr. Read, and some others.

[Attorney-General.]—And you never saw Botha again?—I don't remember having seen him until I saw him at Fort Hare.

Do you mean to say that you never had a gun?—I had once a government gun.

When did you get it?—In 1846.

What became of it?—Mr. Bowker took it away.

Had you never a gun since?—Yes.

Where is it?—I sold it.

To whom?—To my Fingo.

Where is he?—At Whittlesea.

Not a rebel?—No.

Now upon your oath was not the war expected when you sold your gun?—No.

How long was it before the war?—Three months.

Can you say you asked Mr. Wienand for a gun?—We were told, that when we went to Fort Armstrong we would get guns, but when I came they were distributed.

Did you ask Mr. Wienand personally for a gun?—Yes.

Isaac Izaks called and examined.

[By Mr. Watermeyer.]—I am a discharged serjeant of the Cape Corps; I receive a pension; I served 21 years. I was residing at Fort Armstrong when the three Fingoes came. It was early in the morning, a little before sunrise. I saw first the Fingo with the yellow horse come up towards the camp. When he was near to the camp Willem Brass stood before his house, at the place where the fire was, and beckoned to him. The Fingo came up to him. There were more persons with Brass. When he came up Brass asked him where he came

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from; he was then on the horse, and Brass told him to dismount. Frederik Jordaan was there. I was there a little before Jordaan. I was there when Brass beckoned. I saw it. Brass spoke to the Fingo in the Kafir language. I do not understand Kafir. Jordaan interpreted to me what was said. I saw the gun, haversack, &c., taken away from the Fingo. Brass took them away by force. Brass also took the horse, and all that belonged to it. I did not see Andries Botha there all the time this was going on. He could not have spoken to the Fingo and Brass without my seeing him, for it was an open place, and I must have seen him. I saw the Fingo at the fire. He gave me a letter, and I took it to Mr. Thomson. Mr. Thomson was at a distance from where the Fingo was, and was coming towards us. I gave it to him in the street. Mr. Thomson then returned towards Groepe's house, and I went to the Fingo. I had last seen Botha the day before, when he and old Mr. Read and some other people went to Philipton. It was late in the afternoon. I saw them as they rode out of Fort Armstrong. Goezaar, Oerson, and others went with them. I heard of seven horses being taken from the Fingoes. I know little of it. I was in the house, and I heard the people say, "Here is the express coming that went to Fort Hare." I then went out, and saw that the people had taken the horses away from the Fingoes. I saw one in particular, Hermanus Lotz, had taken a black horse. I remember the day of the fight at Balfour, on a Saturday. I was at Philipton. I saw Botha at Philipton early that morning. It was just daylight; the sun had not risen. A little after that, I saw him ride out alone in the direction of Readsdale, an opposite direction to that of Balfour. I did not see him have a gun or a bandalier. I saw him again that day, between 10 and 11 o'clock; he had no gun with him; he was near his house, and his horse had already been knee-haltered, and was running on the land. I have been in service 21 years. I can tell from the appearance of a man whether he has been actively engaged in firing. He would be warm, and his mouth would be black. Even when soldiers have been to a review, they come back blackened with powder.

The Chief Justice asked whether the Attorney-General did not object to this as evidence.

The Attorney-General said, he considered it was very unimportant. He did not know what value to attach to this gentleman's opinions, but he would ask him a few questions presently to try.

[Chief Justice.]—Well, was Botha's mouth black?—No.

Can you tell whether he had washed his mouth since he came home?—No.

[Mr. Watermeyer.]—How did he appear, calm or excited?—He was sitting in a chair before his door, quite quiet and cool.

At this time, when you saw Botha the second time, was the firing going on?—Yes, it was constantly going on, it had advanced to Fort Armstrong. I cannot say for certain if the firing was still going on at Balfour, because there are hills between, but when I heard the great guns I knew that there was firing at Fort Armstrong. I remember the day the General came to Philipton; I think it was on Tuesday, the

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22nd of February. A little before the General arrived, we heard he was coming. Some may have known it, but I was not aware of it before. I saw Botha on the Sunday after the fight at Balfour, several times during the day. I saw him on the Monday also. I saw him last on the Monday evening.

[Cross-examined by the Attorney-General.]—You say you were 20 years in the Cape Corps, and have now a pension?—Yes.

And I hope you are a loyal subject of the Queen, from whom you receive it?—I am.

Will you tell me how you came to fight under Hermanus at Fort Beaufort?—Hermanus made me a prisoner.

[Chief Justice.]—Did you fight under Hermanus against Fort Beaufort?—He marched me towards Fort Beaufort, but I did not get so far as to fight.

Hermanus himself went on with the first of the men to take the town?—Yes.

Then why did you not come back to the Queen's friends?—Whilst the Kafirs were driving the cattle, I and four other old soldiers seized the opportunity to make our escape, and returned to the magistrate at Fort Armstrong.

Do you mean that you went direct from Fort Beaufort to Fort Armstrong?—No, we had not an opportunity of going straight to the magistrate. We had to go along the mountains of the Upper Blinkwater, and there we were again pressed by the commandant of the rebels, Uithaalder. This was the day after the attack on Fort Beaufort. We were made prisoners. One of the men, named John Brander, is here, and three are still up the country, their names are, Hans Zeeland, Michael Andries, and Syster Syster. Uithaalder brought us to his camp at the Blinkwater, but the third day we had an opportunity of getting away. The two Mr. Réads, with Botha, Hatta, and others, visited the camp, and read a proclamation offering a pardon to those who would come in. Although the proclamation was read, Uithaalder would not let us go. Mr. Read said, "We will keep them in talk, and in the mean time you get ready and be off."

[Chief Justice.]—Which Mr. Read was that?—Young Mr. Read.

[Attorney-General.]—Did you leave the same day?—Yes, with those four men, and went to Fort Armstrong, which we left when the magistrate left, and went to Philipton.

[Attorney-General.]—Now come to the day when you saw the three Fingoes. Did you live near Willem Brass?—No, at a distance.

When you first saw the Fingo, he was still on horseback, and Brass told him to dismount in Kafir?—Yes.

How did you know what Brass said when you do not understand Kafir?—I know, because when Brass spoke to him he dismounted.

There was considerable noise and confusion at this time, and you heard the people about threatening the Fingo to kill him?—Yes.

Now, was there anybody else that tried to protect the Fingoes from the violence of the mob?—Myself and Jordaan spoke, and told them not to hurt the Fingoes; the others remained quiet and stood still, except those who threatened to kill them.

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Why did you, as an old soldier, not knock Brass down when you saw him take the property of the government?—I did not think it would go well with me if I did so, for the people were becoming rebellious.

You did not see Botha there that morning?—No.

But you did see him there the morning of the arrival of the seven Fingoes?—I saw him then.

Was that the morning before?—Yes.

There was the same state of confusion as when the three were there?—Yes, but it was not so bad as when the three horses were taken; the people said they would take the horses because the others had not been returned.

[Chief Justice.]—You say you came out after the horses were taken away?—When I came out every man had a horse.

Did you see them driving the Fingoes to the krantz?—No.

What were they doing to the Fingoes?—Nothing.

Then they might have been driving them to the krantz and you not see them?—I did not see them, and I live in the direction of the krantz; I did not even hear of it.

You say you were there when Uithaalder's commando came?—Yes.

Had you a gun then?—Yes.

Were you ready to fight?—I was.

Cannot you say, as a military man, whether you would not have beaten them?—I cannot say, the number of the enemy was large.

Were the people in the fort armed?—They had all their guns and bandeliers.

Why did they not fight?—Because no orders were given.

You did not hear Hermanus Lotz ask for orders?—No; I was not on the same side where he was.

[Attorney-General.]—We will come to the morning of the Balfour fight. Do I understand that the road to Readsdale is opposite to that from Balfour?—Yes, the further you go on the one, the further you are from the other.

How far were you from Botha when you saw him ride out to Readsdale that morning?—Not far; twenty or thirty yards.

Had he a house at Philipton at that time?—He had a Kafir hut.

Was it at that hut, or near that hut, that you saw him?—I saw him quit the house and ride away. I remained there. The people had turned out, and were listening to the firing.

Do you mean to say that the firing had begun before Botha left?—Yes, I think so.

[Chief Justice.]—You don't know any reason that Botha should go to Readsdale?—I had heard the night previous that some of his horses or cattle were lost, in that direction.

[Attorney-General.]—Who mentioned to you this reported loss of his cattle?—I heard him mention it to his wife. I was in his house, and he said he was going early next morning to see that they were not lost, as the Fingoes had already stolen some of his horses.

What Fingoes was he speaking of?—The Fingoes that are located about Readsdale.

Think now, Isaac; did he not speak of Fingoes that were encamped there under the orders of Government?—No, I thought he meant loose Fingoes.

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There was no mention that Friday evening in Philipton that Gen. Somerset was coming?—No.

Nor any commando of boers from the Winterberg side?—No.

Did you know what the firing was when you saw Botha ride away?—No.

You did not know who was firing?—No.

But I suppose it caused a great stir at Philipton?—Yes, the people turned out right and left, and were looking everywhere.

[Chief Justice.]—But it did not disturb Botha?—I don't know.

Was the firing going on when you saw him at his hut?—Yes.

And the firing continued until you saw him coming back again?—Yes.

How far is Philipton from Readsdale?—Five or six miles.

Is there anything to prevent a man from crossing over from the Readsdale road to Balfour?—No.

You say a man who had been biting his cartridges would be black in the mouth, but suppose he had a percussion gun, could you see by his mouth that he had been firing?—No.

Do you not know that Botha had a percussion gun?—No.

Do you know of Botha having a yellow horse?—No.

Were you very intimate with him before that morning?—Tolerably intimate.

[Attorney-General.]—Did you ever again speak to Botha?—No.

Were you there when the General arrived?—Yes.

He came there on the Tuesday, and remained there the Wednesday?—Yes.

Don't you know that Botha's absence was remarked at that time?—Yes, I heard that he was away. I had heard from himself that he would go away.

Did you hear him say this once, or more than once?—Several times.

How long before this had you heard him say so?—From the time the General attacked Fort Armstrong.

Did not the General attack Fort Armstrong on the day when there was the fight at Balfour?—The same day.

Then, do you mean that he said so to you several times before the day when you saw him ride away towards Readsdale?—No, he told me that Saturday evening.

I asked you expressly, did you ever speak to him again, and you said, no?—I said that from the Friday evening until the morning he left, on Saturday, I did not speak to him again.

When was the first time you heard him say it?—On that Saturday evening.

Where?—At his house.

Who was by?—His wife and children.

Now, tell us exactly what he said?—He said he wished to see the General, and he would try and get an opportunity to see the General by himself, for he was afraid of the Fingoes and the other people; and if the General came with the commando he would go away.

Where to, did he say?—He would go out of the way.

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Did he say when he would come back?—He said he would try for an opportunity when he could get the General by himself, and then he would come.

Do you mean to swear that he said, "I will go out of the way because I am afraid of the Fingoes, but I will take the first opportunity of getting to the General?"—Yes, I am certain of that.

And what advice did you, as an old soldier, give him on this?—I told him it would look bad if he did so. He said he was not going to stay away. He said that at the time when he went with the magistrate, he saw the strong feeling of the Fingoes and other people against him, and that made him afraid.

[Attorney-General.]—On this Saturday evening it was not known of what force the General's army was composed?—Yes, we heard that there were soldiers, Cape Corps, burghers, levies, and Fingoes.

[Attorney-General.]—The cannon that had fired at Fort Armstrong were heard at Philipton in the middle of the day, so that it must also have been known that there were artillery there?—Yes.

Now did you not know at that time that there was an order from Gen. Somerset that every one who was not found in Philipton should be treated as enemies?—Yes.

Botha knew this also?—Yes.

[Mr. Watermeyer.]—Do you remember sergeant Jeppe being murdered by the rebels?—Yes.

He was a discharged sergeant of the Cape Corps?—Yes.

Was he murdered by his own people, or by Hermanus's people?—I don't know.

[Chief Justice.]—Do you know whether sergeant Jeppe had been in the rebel camp?—No.

[Mr. Watermeyer.]—I merely ask this on account of the witness. Sergeant Jeppe was murdered, and if this man had opposed Hermanus he would have been murdered too.

[Attorney-General.]—There is no imputation against the witness on that ground. He still receives his pension, and therefore he must have satisfied the military authorities.

[Chief Justice.]—Had you a gun while you were with Hermanus?—I had a gun, and ammunition too.

[By a juryman.]—When you saw Botha riding out that Saturday morning, how was he dressed?—He had a black hip jacket, I think, buff moleskin trousers, and a low crowned drab hat.

CHRISTIAN ZEELAND called and examined.

[By Mr. Watermeyer.]—Before the war I resided in Balfour district. I know Andries Botha. I remember seven Fingoes being sent from Fort Armstrong with letters. They went away with horses belonging to people at the post. I believe the horses were pressed for them. When they came back they had strange horses. When they came in the people ran up towards them, and a man named Hermanus Lotz took hold of one of the horses. I saw another man snatch a gun out of the hand of a Fingo. His name is Samson. I saw the horse and gun taken from the Fingo. I did not see the other horses and guns taken away. They came one after another. I do not know what became of the Fingoes. I saw Botha standing on

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one side with Commandant Groepe, Mr. Thomson, and Mr. Read. I remember the day when three other Fingoes and horses came to Fort Armstrong. It was early in the morning. I got up and heard a noise in the place. I asked what it was? I asked Willem Andries what it was? He said a man had come in with a report. I asked where is the man? He said he is gone. I asked whether he came on foot or on horseback? He said, on horseback; and I asked where the horse was? He said he had been plundered of his horse. I then saw it standing by Brass's house. Willem Andries said there were two more coming on the other side. I said, "If Brass has plundered this man of the horse, I will go and meet the others."

[Chief Justice.]—What mean you? What should you go and meet them for?—Because Brass was doing something that was wrong, and we went to bring them in.

What, in order that Brass might do the same to them? I think he is playing a game of chess here, different to what he did there!

[Mr. Watermeyer.]—He heard that the other had been plundered, and he went for the purpose of assisting the others over.

[Chief Justice.]—What, bring them over to be plundered too!

[Mr. Watermeyer.]—No, my lord.

[Chief Justice.]—He did, for he whipped them over. But I suppose a bad reason is better than none! Well, what further took place?—When I went, two more followed me.

You went on horseback?—Yes.

Then did you go by where Brass's house was?—I passed his house.

Had you got to the other men before the others followed you?—We were all behind one another; I was in front.

Well, what happened?—I came up to the first man and asked him who he was, and where he came from. We could not well understand him, for he spoke the Kafir language; but I understood him to say that he came with letters for the Rev. Mr. Thomson.' While I was talking, the man who had followed me, Laverlot, threatened the Fingo with his gun. He lifted his gun, but I do not know if it was to strike or fire. I was startled at the moment. I did not notice if the gun flashed in the pan. I cannot say if it did or not. I said to Laverlot, "It is wrong, what you are doing; we did not come here for that purpose, but to help and save them." We then rode up to the camp. When we came close to the fort, where the people were assembled, I said, "These are people who are bringing letters to Mr. Thomson." They then made way for me, and I went on before them. When I looked round I saw that people had closed in upon the Fingoes and attacked them. The Fingoes were in the middle. Then there came out of the crowd a man with one of the horses that the Fingoes had been riding. His name is young Bantam. I think he must be now among the rebels. He was one of Uithaalder's people. I took the horse from him. Whilst I had the bridle, Bantam pulled off the saddle. I went with the horse down to the river. Laverlot took the other horse. I concealed the horse in the trees and fastened him up. After

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this I went to Philipton to report to field-cornet Fourie what had been done with the horses. While all this was going on I did not see Andries Botha among the people. When I came to Philipton, I found Fourie there, and Botha sitting by him. I reported the affair to Fourie. I reported it because I was angry. I saw that it was not right what they had done to the post. The next day I took the horse I had concealed to field-cornet Fourie.

[Chief Justice.]—What are you now?—I am among the volunteers in the Kat River levy, under Capt. Fisher and Mr. Thomson.

[Cross-examined by the Attorney-General.]—I had been living at Fort Armstrong, since the time I was ordered to come and do service. About Christmas, 1850, I was living in the field-cornetcy of David Jantjies, who is now a prisoner at Bain's Kloof. I was at Fort Armstrong the day Uithaalder came. There were men there who were anxious to fight. I know Hermanus Lotz; he was anxious to fire on the rebels. Botha was also there that day, he was anxious to fire. I think so, because when Uithaalder came, Botha and Groepe went out to stop him and send him back. I think Groepe also was ready to fight. I cannot say why they did not fight, but in my opinion they were ready. I remember the seven horses being taken from the seven Fingoes. I cannot name any one who took the other horses except Lotz. I did not know all the people in the fort, but I know my immediate neighbours. Four Fingoes came in abreast. I saw them with my eyes; and the three others were a little behind. I did not see them. There was a large crowd of people, making a great noise and confusion. It was the first time I saw Botha that morning, when he was standing with Mr. Thomson and Groepe. Next morning came three Fingoes. Two men went out with me to the Fingoes, Laverlot, and Ruiters, and others followed. I did not see Jaagers. I do not know him. I got up that morning, out of bed, when I heard the noise. I did not take my gun out with me then, but when I was going out to the other Fingoes, I went and saddled my horse and took my gun. I did so because the thing I saw I considered to be wrong. I took my gun with me because I saw many strangers on the post. It was dangerous at that time to go as far as the river without your gun, for there were so many enemies mixed up with us that you did not know who was your friend and who was your foe. I mean that I did not know who were for the government and who were not. By foes I mean the foes to government, the rebels. Those who were on the side of government could not ride in safety without their guns. I have not noticed Botha come in to Fort Armstrong from Philipton without arms. I never saw him come in from Philipton at all. When he came from other places he was armed. There was a time when he used to come and stay overnight, and go away the next morning. He was always armed then when he came and went. I knew Botha well at Fort Armstrong. I cannot say we were intimate, but I have often spoken to him in friendly conversation. I never heard him say he could ride any where over the settlement with only his sambok. When I reached Philipton on the morning of the robbery of the three Fingoes, I found Botha at

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Fourie's. It must then have been about 8 or 9 o'clock. I went to report to Fourie instead of to the commandant on the spot, because it appeared to me that there was no respect for Groepe at Fort Armstrong; and besides, most of the time he was sick. I told him of it, but afterwards. Fourie was the only man who had power, because the rebels could not venture to do before him what they could before Groepe. I consider that those who stole the horses were rebels. When I got to Fourie's, old Fourie was there with Andries Botha, and Jan Fourie and Hatta came after I had been there a little time. I cannot say I remember anything particular that Botha said, but he appeared to be surprised. I remember when Uithaalder's camp was brought close to Fort Armstrong. It was less than two weeks before Gen. Somerset came. This camp had been before at Blinkwater. I do not know whether Uithaalder was then frequently in Fort Armstrong, because I went to live at Philipton shortly after the three horses were taken. I have seen Uithaalder in Philipton. I never saw him speaking to Botha. I have seen him speaking to old Mr. Read. I saw him there twice. I was not taking notice of him, for my business called me to look after my cattle. I left Philipton when the General came. Uithaalder and Sandilli came with a commando to Philipton. I think it was the day before the fight at Balfour. I was at Philipton that day. They said they came to work with the Fingoes. I heard them say so. They meant to attack the Fingoes and take their cattle. There were people willing to resist Sandilli, but his force was so great that it was of no use, and they were obliged to use entreaties. Botha was in Philipton that day; he spoke to Sandilli in Kafir. I do not understand Kafir. We were curious to know what Sandilli said, and therefore a man of the name of Oerson interpreted to us. Sandilli's commando stood on one side, and he came forward to demand what he wanted. A cluster of people went to speak to him. Botha was among them, and old Mr. Read. I was at Philipton on the day of the Balfour fight, a Saturday. I did not see Botha early that morning; I saw him in the afternoon. He was at the place where he lived, in Philipton. I did not speak with him. I did not see a horse at his door. His horses were grazing near the house. I know he has two horses, a black and a brown one. I saw no yellow horse. I saw him standing at his door from my door. I am certain I saw him. If I am right, the firing was still going on. After that I am not sure that I saw him at Philipton, but I do not recollect that I missed him. When the General mustered the people at Philipton he was not there. The General called the people to the last man, but Botha did not come. The General called for the list, and Hatta called out the names, in the presence of the General. Fourie was present. I did not hear him say anything about Botha. I do not know if there was any remark made about Botha being away.

Cornelis Magerman called and examined.

[By Mr. Watermeyer.]—I was lance corporal in the Cape regiment, and retired on a pension after 18 years' service. Before the rebellion, I lived at Tidmanton, in the Lower Blinkwater. I am an elder of the church there. I went to

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live at Fort Armstrong on the 1st of January. I remember that there were seven horses taken from seven Fingoes. I saw Hermanus Lotz take one of them, a black horse. I saw the people take the horses from the Fingoes. I did not see Andries Botha among them. I did not see Botha that day, but I saw his horse saddled, near Commandant Groepe's house in the fort. I cannot say how late it was. I saw the Messrs. Read that afternoon. I remember three horses being taken from three Fingoes. I saw Willem Brass take the yellow horse. I did not see the others taken. I did not see Botha that morning at Fort Armstrong. I heard that he had gone the day before to Philipton with Messrs. Read. I was at Fort Armstrong when Uithaalder's commando arrived on the 22d January. I saw Botha and Fourie there as long as Uithaalder was there. I could see nothing in Botha's conduct that day but what was good, as a faithful man to the Government: and Fourie also. I was at Philipton the day of the fight at Balfour, the 22d February. I did not see Botha that day. I saw him the next day, a Sunday, a little before the church commenced. I am quite sure of it. I did not see him again on the Monday, but I saw him on Tuesday, the 25th, in the morning, before the General came. He said to me, I am now going away. He said he could not stay, because the General was coming with Fingoes and other people. I am not certain what time in the morning this was, it must have been about 8 or 9 o'clock. No one was present at the time.

[Chief Justice.]—Did you then expect Gen. Somerset?—Yes.

How long had you been expecting him?—I cannot say how long, but it was a few days before.

What do you mean,—that he had fixed that day, the Tuesday, for coming?—He sent word that he would come.

Was it generally known that he had sent word that he would come?—Yes.

[Cross-examined by the Attorney-General.]—You say that on the day Uithaalder's commando arrived, Botha's conduct appeared to be that of a true and faithful subject of the Queen. Can you tell us what he did?—The first thing was, he rode out that morning with old Piet Bantam to meet the rebels.

Did you see them riding out?—Yes.

Can you swear that young Piet Bantam was not with them?—I did not see him.

What was the conduct of Botha that you say was good?—When he met the commando, he did his utmost to come and tell us that the rebels were advancing. He galloped his horse back.

Young Piet you did not see come back with him?—I did not see him either ride out or return.

What did Botha do more?—I cannot at this moment remember.

Had you a gun that day?—No.

On the day of the fight at Balfour did you see Botha?—No.

Did you see Jan Brander?—Yes.

Where did you see him?—At his house in Philipton.

When?—About 10 or 11 o'clock.

Do you know the man Kieviet Brander?—No, but I have heard the name.

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Do you know John Green, the tailor?—Yes.

At the time of the fight he lived at Philipton?—Yes.

Till the General came?—Yes.

You say you saw Botha on the Sunday afterwards?—Yes. I saw him as I was going into the large place where the church is.

Was he at church?—That I cannot say.

Were you at church?—I was.

Who preached on that day?—I cannot say which of the gentlemen preached.

It is very odd that you should remember the man who met you going in and not remember the man who preached?—I cannot recollect.

[Chief Justice.]—You, an elder of the church, and do not know who preached! Did you preach yourself?

[Attorney-General.]—If you don't remember who preached, it is of no use asking you the text?—It is so long ago I am not able to name the text.

What date was the fight of Balfour?—The 22nd of February.

What day of the week was it when the General came to Philipton?—Tuesday.

What time of the day?—I think about 11 or 12, perhaps later.

Was Fourie there?—Fourie came in with the General, he went out to meet him.

Can you say how long it was before this, that Botha told you he was going away?—I think two or three hours; I cannot say exactly.

Had Botha spoken to you as if he were going away immediately?—Yes.

He did not tell you any particular place where a friend could see him, and tell him if the General came with or without the Fingoes?—No.

[Chief Justice.]—Then you cannot tell whether he was actually gone the whole time, or hidden, like the tailor, under the featherbed?—No.

[Attorney-General.]—Do you not know that the General had published, that any man who did not remain at Philipton should be treated as an enemy?—I knew it.

Had you remonstrated with Botha against this resolution?—No.

Why not, sir?—Because he said it was his intention to go to the General if he came without Fingoes and others.

Was not this what Botha said, that if the General came with Fingoes and others, he would not stand the affront, but would go into the bush and become a rebel?—No.

Do you recollect that he complained of having been ill-treated at Fort Beaufort?—Yes, he did.

Was he not angry?—I cannot say whether he was angry, but there was something in his heart that was sore about it.

Have you not heard him threaten what he would do to the Fort Beaufort people?—No.

Did he tell you why he would go into the bush if the General came with the Fingoes and the other people?—Because he had been so ill treated by them at Fort Beaufort.

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[Chief Justice.]—It was therefore on account of what had happened, and not of something to be done, that he went away?—I cannot say.

[Attorney-General.]—Was General Somerset's commando yet in sight when he told you this?—No.

You say the General had sent word; to whom did he send word?—Fourie went to meet him. A report came in early that morning.

From whom?—I do not know.

To whom?—I do not know.

You know not to whom, nor by whom,—how do you know about it?—I have it from other people, but I cannot name them.

[Chief Justice.]—Mr. Magerman, it is fair to tell you, we know from people who have been examined, that it was not known until the General was seen on the road. And now, will you swear that there was a message sent?—It was, as far as I know.

You must be mistaken, Mr. Magerman.

Coenraad Scheepers called and examined.

[By Mr. Watermeyer.]—I am a sergeant in the Kat River levy, and a retired corporal of the Cape corps. Before the rebellion I lived at Balfour. I went to Fort Armstrong at the commencement of the war, about Christmas. I remember the day Uithaalder's commando came to Fort Armstrong. I remember seeing Andries Botha there that day. As far as I could see, I saw nothing to make me think him disloyal. I saw a rebel take a saddle from Macmaster's stable, and the commandant sent Botha to take the saddle from him.

[Chief Justice.]—An easy saddle to ride off upon! Did Botha appear ready to fight that day? Did you hear him talk to the people about rebellion, that it was right or wrong?—That I did not hear.

Did you think he was ready to fight,—"to spill his blood for the English blood?"—Yes, he was ready (*kant en klaar.*)

[Mr. Watermeyer.]—Do you remember the day that seven Fingoes came?—Yes.

What was done?—I did not see what was done with them. I heard they were plundered.

You remember the day that three Fingoes came there?—Yes.

Tell us what you know of them?—I do not live in the square, but when I came up to Commandant Groepe's house, the commandant sent me to Willem Brass to tell him to give up the yellow horse to the Government. I went, but I did not get the horse. Brass was angry, and took out his gun, and wanted to shoot us. I stood talking to him when Jordaan came up to us. I saw the other two horses; Christian Zeeland had one and Witbooy Laverlot the other. I did not see Botha. He was not at the three horses. I did not see him at the fort all that morning.

[Cross-examined by the Attorney-General.]—You had the misfortune to be marched under Hermanus to the attack on Fort Beaufort?—Not so; I had gone off to Blinkwater with a proclamation of Gen. Somerset's which was given to me by Mr. Wienand and the commandant. I went with Willem

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Brass. I got there on the Monday. Hermanus was ordering the people, and calling them together for a commando. I could not get an opportunity of giving the proclamation to the old soldiers, Izaks, Brander, Zeeland, Andries, and Systers. I knew that they had erven in the neighbourhood. I got an opportunity afterwards. We were told to go on the sly, because we heard that the rebels had torn up the letters sent to them before. Hermanus pressed us.

Greatly against Brass's will, I suppose?—Yes.

And of course against yours?—Very much against my wish.

Is this the first time Commandant Groepe sent you on any message?—No, I was sent before to Mancazanna, to the Hottentots. I do not remember the date; it was at the beginning of the rebellion.

Have you known Botha long?—Ten or twelve years.

Were you ever sent by Groepe to Botha?—No.

Did you ever see Botha and Hermanus together?—No.

Did you ever hear Botha speak of the rebels?—No.

Andries Hatta called and examined.

[By Mr. Watermeyer.]—Before the outbreak of the rebellion I lived at Readsdale in the Kat River. I know Andries Botha well. I remember hearing of seven horses being taken from seven Fingoes. I was then living at Philipton. I heard of the robbery the same day. I saw Andries Botha on the afternoon of that same day. He came up with the Rev. Mr. Read from Fort Armstrong to Philipton in the afternoon, near evening. The intelligence was brought by Jan Fourie to his father. I afterwards saw the horse and gun which Jan Fourie brought. I heard the next day of the robbery of the three horses. Christian Zeeland brought the news. I was present at Fourie's house, and Andries Botha was also present when Zeeland brought the news. This was about 8 or 9 o'clock in the morning. I had seen Botha before, that morning, at sunrise. I have accompanied Messrs. Read, Fourie, and Botha to the rebel camp at Blinkwater. We went with the Governor's proclamation, and to advise the people to come in. I went three times. Andries Botha was with us, I cannot say all three times; it might be three, but I am certain twice. Botha spoke to the rebels. I heard him. He spoke a great deal. He said to them they had done that harm without the advice of the head men; and that they would not listen to the ministers and other people who came to dissuade them from going on with this evil,—the rebellion. He spoke to them on both occasions, to the same effect. I considered he was stanch to the Government, as far as I could judge. I remember when Botha returned to the Kat River, after escorting the magistrate to Fort Beaufort. From that time he remained at Philipton. I saw him daily. I noticed him particularly; I should have missed him if he had been absent. I remember the day of the fight at Balfour. It was on a Saturday, I think, the 22d February. I did not see Andries Botha in the forenoon of that day. All the people were out looking. I cannot say if he was among them. I saw him, I think, in the middle of the day. I saw him on the Sunday more than once; first by the church, at church time. I cannot say whether he was at church; a good many people were there. I saw him after church, during the day. I remember the day General Somer-

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set came, I think it was Tuesday, the 25th. I saw Botha on the Monday. I saw him great part of the day. I saw him on the morning of the day when the General came, but not after. Botha had said before, if the General came with the Fingoes and settlers he would not stay there. I went from Philipton with the General on Thursday to Eland's Post. I saw him, if I remember well, on the Friday, the next day. I saw him in the field when I went out to graze my cattle from Eland's Post, about half an hour on foot from the post. The place is called Kop en Pootjes. Jan Matroos was with him, and Isaac Arends. He was one of those people who had fled for fear of the Fingoes. So had Botha, as he said. I spoke with Botha. I told him I would advise him to come in. He said to me he would come in; that it was only for fear of the Fingoes; but as soon as he could get an opportunity he would come in.

[Chief Justice.]—Did you not laugh at him?—No, I did not laugh.

Did you not think it ridiculous that he should be afraid of the Fingoes?—I could not think so, for he gave me a reason for it. He said, when he had been to Fort Beaufort with the Magistrate they had been firing at him there, and that the savage feeling was still in them.

So you thought that was a good reason for advising him to come in?—I knew that the General was going to leave with the Fingoes and other people.

Therefore you advised him to come in to be shot at?—No, I did not advise him to come in at the moment I was speaking, but after they had left.

Do you think that Gen. Somerset could have restrained his forces from shooting Botha?—That I cannot say; if they attacked him in Beaufort, how could I think that it might not happen in another place?

Then you thought he was right in staying away?—I cannot think otherwise than he told me. On his reasoning I thought he was right.

You would have done the same I suppose?—Yes, if it had happened to me, I would have done the same.

Rather a bad way of keeping out of harm's way!

[Mr. Watermeyer.]—How did the Fingoes behave at Philipton, friendly or unfriendly?—They were not friendly. John Green told us that he was so frightened of them, that he got under the bed. I saw them break open the chest of Oerson Magerman's wagon, and they took his horse, which they claimed.

[Chief Justice.]—Anything else?—What I saw only I can say.

And that is to show that the whole body behaved unfriendly and disorderly. I have tried many people here for opening chests. Is that all you know of?—There were other complaints; several horses which they took are gone to this day.

Did they shoot any one?—That I know not.

What body of Fingoes were under Gen. Somerset. I suppose some hundreds?—I cannot say, I do not know the number.

Were there more than 50 or 500?—Oh, there were more than 50, more than 100.

And some half-dozen broke open a wagon-chest!

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[Mr. Watermeyer.]—Then after you saw Botha at Kop en Pootjes, where did you see him next?—On the following day, Saturday, in the evening, at Eland's Post. Col. Somerset with the Fingoes had left when he came in. Capt. Fisher was in command of the post. I was present when Botha was delivered over to him.

[Adjourned.]

TUESDAY, 18TH MAY, 1852.

ANDRIES HATTA cross-examined.

[By the Attorney-General.]—I am a brother-in-law of Jan Fourie, and lived with the Fouries at Philipton. Botha was a good deal at Fourie's house at Philipton. He often took coffee there. He lives not far off; about as far as from here to the bottom of Government Gardens (about 50 yards). It is so long ago since it occurred that I cannot remember the words Botha used when Zeeland brought the news of the robbery of the three horses, but he was astonished. We had been drinking coffee when he came. It was about nine o'clock. We were drinking coffee in the hall. I and Jan Fourie were there when Zeeland arrived. In my opinion, Zeeland is wrong if he says Jan Fourie came afterwards. I remember Botha saying, "Yesterday there was a robbery of horses, and to-day we get tidings again." I cannot remember any more that he said. I am sure he spoke of the taking of the seven horses the day before as a robbery. He had not mentioned the robbery before in my presence; that was the first morning he was there after it, for he came the night before. Before Zeeland arrived, we were all speaking of the robbery of the seven horses, on account of the tidings which Jan Fourie brought. Botha was at Fort Armstrong himself; he could not express surprise at it, but he spoke of it as a bad act, that he disapproved of—as the act of rebels; but he did not actually use the word rebels. He had expressed his disapproval of the taking of the seven horses before Zeeland came in, and he then expressed surprise at the tidings brought by Zeeland. The ministers were present when Botha addressed the rebel camp; I cannot answer for all the times, but when I was present. I was never there alone with Botha. He never spoke to me about visiting the rebel camp alone to convert the rebels. He never told me that he had been to the camp alone.

On these occasions when you visited the rebel camp, did they not express very wild notions of establishing an independent republic for the Hottentots?—They spoke about having a separate district.

[Chief Justice.]—What did they say?—They said they would have a separate piece of land, or district, in which they would live by themselves.

[Attorney-General.]—Did they not wish to be under an independent government of their own,—to have their own judges, magistrates, field-cornets, &c.?—I cannot recollect that they said they would establish their own government.

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[Chief Justice.]—Do you mean to say that the rebels did not rebel?—No, I do not mean that.

What did they mean then, what was their object?—I cannot say what their object was.

[Attorney-General.]—Do you not know that they said the Kafirs should have their land, and the boers their land, and that they should have the settlers' land?—I heard them say, that they were against the settlers, to drive them over the sea.

Do you mean that that was the general talk of the camp?—Yes.

Now we come to the 22nd of February, the day of the Balfour fight. Did you go out to the high ground to look what was doing?—No, I did not go so far.

Were you out of Philipton at all?—No, just outside the house.

[Chief Justice.]—Where you stood, could you see Balfour?—No, I could only look in that direction, at the smoke.

[Attorney-General.]—Did you see that others went out?—A little further than where I was, there was high land, and they went there.

Do you remember whether women as well as men went there?—I cannot say.

The place where these people were looking on was far from the fighting?—Yes, the place I mean is close to Philipton.

Where was Jan Fourie that morning?—There was such a bustle I could not say; I think he was at Philipton.

The jury will not understand that I am imputing to Fourie that he was in the fight at all. Your other brother-in-law, young Cobus Fourie, where was he?—He has a place near Philipton, and he was out with the cattle that day, and I did not see him.

Your father-in-law was in Philipton?—Yes, when the firing was heard he was in Philipton.

Now, do you know of any of the rebels who were engaged in the fight coming to ask your father for gunpowder?—No, I don't recollect that.

Say now, as an honourable man, what you know about it?—It may have been, but I don't recollect it.

Did you ever hear of it before?—(The witness hesitated.)

[Chief Justice.]—Did you ever see such a thing! this is not a Fingo! (Witness.) I heard that they came there to ask for powder, but I did not hear them ask.

Why did you not say that at first?

[Mr. Watermeyer.]—Your lordship is drawing a comparison between Hottentots and Fingoes. Now, everybody knows that the Fingoes are particularly loquacious and flippant, while the Hottentots are cautious and taciturn.

[Chief Justice.]—I do not know from my court experience that the Fingoes are flippant.

[Mr. Watermeyer.]—Well, they are vastly eloquent and ready in talking, while the Hottentot is slow and reserved.

[Chief Justice.]—But this is not a common Hottentot. This man is living in better life and with associates that tend to improve him. Let us understand each other. The jury heard the observation I made, and they will judge whether it was a fitting one. I think it was. I do not see why there should have been a pause at that question, although the

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Hottentots are proverbially slow. I, therefore, now put the question again. Did you ever hear of any of the rebels who were engaged in the fight coming to ask your father-in-law for gunpowder?—I remember hearing of rebels having come to ask for gunpowder, but whether it was on that occasion, I do not know.

Did you hear of it during or after the fight?—I think it was after.

Then it might be on the very day of the fight?—I cannot say whether it was that day.

Perhaps you cannot say whether it was not at the time the fight was going on?—I don't know.

You must be aware that this is a very uncommon circumstance; it is surprising that rebels should come to ask for gunpowder, and you not know of it.

[Attorney-General.]—Perhaps Commandant Fourie may know something about it. Did you see any of the Philipton Hottentots who went out were armed?—Those I spoke to were unarmed. I did not see any people go out armed.

Did you see Botha that day?—Yes, in the afternoon.

Did you speak to him?—I do not recollect that I spoke to him at the moment.

Did you speak to him afterwards?—Yes.

[Chief Justice.]—The witness answers quick enough at times; almost before he hears the question.

[Attorney-General.]—Did he say that by any accident he had got a horse that morning?—No, he did not speak about a horse.

Nor did he speak at all of having been at the fight at Balfour?—No, I did not hear him say so.

Then, as he did not speak about these things, can you tell us what he did speak of?—Yes, he spoke of the fight at Balfour.

[Chief Justice.]—Well, what did he say of it?—He said, it was so early and so unexpected that he could not understand what it was.

Am I to understand you as swearing that you knew at that time who had been firing at each other at Balfour?—Yes, then I knew.

Who were they?—The burghers and the English fighting with Uithaalder and the rebels.

[Attorney-General.]—You knew this at the time you spoke with Botha?—Yes.

Was Botha at church the next day?—I have said that there were many people in the church, and I cannot say whether he was there.

You were not in church yourself?—I was.

Was Botha in the habit of attending the church regularly when he was Philipton?—Yes.

Who preached?—It is so long ago I cannot say for certain, but I think it was one of the clergymen from Kafirland.

You will not swear that it was not Mr. James Read, junr.?—No, I cannot swear.

Did you see Mr. James Read that Sunday?—It is so long a time that I cannot remember everything.

But what I complain of is that you do not remember anything but Botha!

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[Chief Justice.]—You have not answered the question; it is comprehended in your answer, but you have not answered it. Do you remember seeing young Mr. Read that Sunday or not?—I think he rode out, but I cannot say for certain.

Do you remember seeing him or not?—It is so long ago that I cannot say for certain.

I do not want you to say for certain, but do I understand that you do not remember it?—No.

Well, that is all I want; I do not wonder at your forgetting it.

[Attorney-General.]—Did you see Botha on Monday?—Yes.

Did he speak to you?—Yes, he spoke of the General's leaving for Lushington.

Where did this conversation take place?—In front of my father-in-law's house.

Was anybody present?—I cannot recollect that any one was present.

Then, on Tuesday morning you saw him?—Yes.

How often?—I only saw him once that Tuesday.

How late was this?—It was early; the sun was up.

Was anybody present then?—Yes, he had come up to my father-in-law's house, when my father-in-law and Jan Fourie were up-saddling to go to the General.

And he then spoke, as you say, of his intention to go away if the General came up with the Fingoes and others?—Yes, he spoke of that to us.

What did your father-in-law say?—All I remember his saying was, that he would be very sorry if he left.

Do you mean that Fourie would be sorry for it, or Botha would be sorry for it?—Fourie.

Did Fourie tell Botha why he would be sorry for it?—Because he would not like him to go away from the house to the field.

[Chief Justice.]—Do you think that he meant the cold and exposure to the wind and weather?—Those were his words.

[Attorney-General.]—Did he say that he would endanger his life?—Yes, if he were to rove about the fields.

Did Fourie say from rebels, or from the Government, that his life would be endangered?—I understood him to mean that he would be in danger from rebels, and not from the Government.

[Chief Justice.]—Did your father-in-law say that his life would be in more danger from the rebels or the Fingoes?—My father-in-law did not use the words rebels and Fingoes that I remember.

But you are quite sure that your father-in-law told him that he would endanger his life by the rebels?—Yes.

Did Botha in your presence give your father-in-law a message to take to the General?—I recollect that Botha more than once spoke to my father-in-law, if the General should come what he would do.

Did he give any message in your presence?—Not in my presence, but I heard of it.

[Chief Justice.]—Why not say that at first? Yet your father was just going away to the General?—Yes.

[Attorney-General.]—Now, do you remember if Botha de-

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clared his intention of going into the bush if the General should come?—Yes.

Was that intention of his a matter of notoriety in Philipton?—I cannot say if it was generally known.

But he made no secret of it?—No.

[Chief Justice.]—Can you mention any persons who, to your knowledge, were aware of this intention of Botha?—I think it must be known to Jan Fourie and my father-in-law.

That we know, but you said he made no secret of it; now, can you name any other person whatever to whom he told it?—I cannot name any man, but I think the clergymen must be aware of it.

What clergymen?—The two Mr. Reads.

And Mr. Thomson?—That I cannot say.

What makes you think that Messrs. Read knew of it? Did you hear them speak of it, or did you speak to them of it?—Because Botha came there constantly, and they talked of it.

Do you mean that he talked constantly of it?—Yes.

[Attorney-General.]—Do you know of any other man who expressed his intention also to go into the field if the General came with the Fingoes?—No, I do not remember any other.

Did Botha say he would go to the field generally, or did he name any place where your father would find him?—No, he did not mention any particular place.

Do you mean to swear that you had no knowledge of any particular place to which Botha intended to go?—Yes, that is what I mean.

[Chief Justice.]—Did you ever get to the knowledge of where he did go to?—No.

[Attorney-General.]—Did he state when he would come back?—I recollect that he said, the first opportunity he could get up to the General he would come.

Were you present on the Wednesday when the names of the Philipton people were called out?—Yes.

Botha's name was called out?—Yes.

Was anything said to the General about his not answering?—Not at the moment. I think Commandant Fourie had told the General before that.

You were not then present?—No.

We will get that from the commandant.

[Chief Justice.]—Were you close to the General when the names were called out?—Yes, close by.

Was Piet Bruintjes' name called out?—Yes.

Did he answer?—No.

Think now. Did not the General say, on the instant; "Botha and Bruintjies are with the rebels?"—I cannot recollect the words.

Did he say anything?—Yes.

What was it?—It was something about Philipton.

Did he not say that Philipton was a nest for rebellion?—Yes, that is what I understood.

Did he not name Botha and Bruintjes as being with the rebels?

[Chief Justice.]—Now mark! you are on your trial before the jury for your veracity as much as Botha is for treason. Did you hear him say that?—I must speak the truth; that is why I stop. I cannot recollect the words.

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Or words to that effect?—He said Philipton was a nest of rebels.

Did he name Both a and Bruintjes, and say they were with the re bels, or words to that effect?—I think he spoke something about Botha and Bruintjes.

[Attorney-General.] —What language did he speak?—English, but there was a n interpreter.

[Chief Justice.]—You say he said something of Bruintjes and Botha; did he say they were in the bush, or with the rebels?—That is what I say, I cannot recollect the words; but he said something of it.

Did he use one or other of these words?—Yes, one of these words.

You said, somebody had told the General of the message which Botha had given; why should the name be called out?—That was the list, and the names were called over to point out where every man was.

[Attorney-General.]—You went to Eland's Post with the General on the Thursday, and left it on Friday, in the morning. Was the sun up?—I should say it was up about a couple of hours (about 7 o'clock.)

At what time did you see Botha and Matroos in the field that day?—About 8 o'clock, I think.

Was it before the General left?—The General was there when I left, and he left when I was in the field. He was getting ready when I went out.

Could you see the General getting ready at Kop en Pootjes?—Yes, there is a spot where you can see the General go away.

Did you see the General going away from that spot before you saw Botha?—I cannot say.

As you left the General just preparing to go away, why did Botha not go into the post with you on Friday?—That I cannot know.

Did he give you any reason why he did not come?—No. I advised him to come in, and he said there was nothing that hindered him except that he was afraid of the Fingoes and the settlers, but that he would seize the first opportunity to come in.

Did you tell him that the General with the Fingoes and settlers were just going away, and to come in at once?—I told him that the General was just ready to start, but he had not left yet when I left.

Did you ask Botha, when you met him on the Friday morning, where he got his food?—No, I did not ask him.

How did you think he got his food?—I did not think much about his food, for in the gardens there were mealies and such things.

[Chief Justice.]—They were not his, I suppose?—No.

[Attorney-General.]—Was he on horseback and armed when you saw him?—(A pause.)

Come, man, you cannot forget that?—I want a little time to consider. (A pause.) I am not certain, but I think he had a gun.

And Matroos and Arends, had they guns?—I am not certain, but I think they had.

Did you know Jan Matroos before that?—Yes.

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When had you last seen him before that?—I cannot say the day, but when we went from Philipton to Fort Armstrong, I saw him at Fort Armstrong.

Was that on the Thursday?—No, I cannot say the day; but I mean before the arrival of the General. I resided at Philipton and he at Fort Armstrong, so I did not see him after that.

[Chief Justice.]—What was Matroos before he lived at Fort Armstrong. He did not live on mealies in the field, I suppose?—He was a man who used to plough and sow.

On his own erf?—I cannot say if he had an erf.

Who was Arends?—He was a man there; I knew him from a child.

[Attorney-General.]—During the war had you known anything of Arends?—No.

Do you know where he is now?—He is in the Kat River Levy.

When did you last see or hear anything of him before your coming down to give evidence here?—I saw him when we were ready to start for here.

Why did he not come?—I do not know.

[Mr. Watermeyer.]—You remember that you tacked on these charges to the indictment on the day when the man ought to have been tried, and we gave the name of Arends as a witness.

[Attorney-General.]—If the name was given, he was written for; but if you brought down Matroos without reference to these charges, Arends was just in the same predicament. You cannot say, Hatta, whether Botha came with the intention of giving himself up?—I cannot say. He said he would come in on the first opportunity.

Now, think a while, Hatta. Did not Botha tell you that day that the rebels had been to him to take the command?—I do not recollect that he said that.

[Mr. Watermeyer.]—I hope when you put such questions, you have facts to go upon.

[Chief Justice.]—You are quite right, Mr. Watermeyer, in making that observation.

[Attorney-General.]—I have facts to go upon. I assert that I have. It is stated in Mr. James Read's pamphlet.

[Mr. Watermeyer.]—It does not say anything of that nature.

[Attorney-General.]—Pardon me, pardon me, I assert that it does.

[Chief Justice.]—You have satisfied me. Now, witness, do you swear that Botha did not say that the rebels had been with him to take the command?—I cannot swear that he did not, but I do not remember it.

Do not you think, witness, that the jury will consider it strange that you should not remember words of such an effect and tenor? I therefore pray you to try your memory again; can you swear he did not tell you that some communication had taken place between him and the rebels, asking him to take the command?—I say I cannot swear it.

I would not for the world misrepresent you, or have you misrepresented; you must remain reflected in your own mirror.

[Attorney-General.]—You know that Capt. Fisher remained in command of the post after the General left?—Yes.

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In advising Botha did you tell him that if he came in and saw Mr. Wienand you had no doubt it would be all right?—Yes, I thought that myself.

And told Botha that?—Yes.

How long was he with you on the Friday morning?—I cannot say for certain; I think about half an hour.

[Chief Justice.]—Did Matroos and Arends hear all that was said?—I think they did.

Were they by?—Yes, they were all together.

[Attorney-General.]—When Botha left you that day, the Friday, did he say what day he would come in to see the magistrate?—No.

Were you at the post on the Saturday when he came in?—Yes.

Who first saw him that day?—I do not know.

He came in on horseback?—I do not know.

Was he armed?—When I saw him he was not armed.

Do you remember having seen a gun said to be his?—I cannot say.

Was there not some Loyal Association established in the Kat River during the rebellion?—Yes, at Philipton.

You were a member of it?—Yes.

And the Messrs. Read, and your father-in-law, and Jan Fourie?—Yes.

And Botha also?—Yes.

Did Botha remain a member of that association to the last?—Yes, till he left.

Was he not read out of the association?—Not that I know of.

Was not his name erased?—(After some questions and answers, in which it appeared that both counsel and witness were confused by the translation, it was ascertained that no meeting of the Association had been since held, the members having left Philipton with the General.)

[Attorney-General.]—Were there any rules or regulations prescribed by this society for the guidance of its members?—Yes, I recollect some of them.

How did the members signify their assent?—They signed their names.

Now, can you remember whether Botha signed these rules?—I saw his name to them; whether he signed it himself I cannot say.

Did Botha ever say to you that there was one of the rules which he did not agree to, and that he would not consent to be bound by it?—Botha never told me so.

[By Mr. Watermeyer.]—Piet Bruintjes, who was absent from Philipton, was also a field-cornet?—Yes.

Where is he now?—In the Kat River Levy.

[Chief Justice.]—Is that a newly-raised corps?

[Mr. Watermeyer.]—It was raised shortly after these proceedings of the 24th and 25th February, 1851.

[Attorney-General.]—Do you know on what day Piet Bruintjes came in?—No, I saw him in Eland's Post, I think after Botha came in.

Jacobus Fourie examined.

[By Mr. Watermeyer.]—I am field-cornet of Readsdale. I was appointed special commandant by Gen. Somerset during the war. I know Andries Botha. I began

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to know him intimately in the war of 1835. I accompanied the ministers three times to the rebel camp at the Blinkwater. Andries Botha went with us all the three times. We went to dissuade the people from the rebellion. On these occasions Botha's conduct was good. He tried to persuade the people to desist from what they were engaged in. This was on all three occasions. I remember Uithaalder's commando coming to Fort Armstrong. I remember that Botha was ready that day to do his duty. He was ready to fire on the rebels. I remember a report of three horses being taken from Fingoes being brought to me at Philipton by Christian Zeeland. This was in the morning about 9 o'clock. Botha was with me when the report was brought. Jan Fourie and Andries Hatta were also present. I saw Botha that morning before Zeeland came. I saw him at my house at sunrise. He was with me from that time till Zeeland came. I saw Botha on the previous afternoon, the same day that my son Jan brought me news of the seizure of the seven horses. From the morning of the three horses till we took the magistrate to Fort Beaufort, Botha lived at Philipton I accompanied the magistrate to Fort Beaufort. We did not remain there that night. Not one of the escort remained. I saw no possibility of our remaining there, for when Col. Sutton brought us into the square, it was filled with Fingoes with assagais in their hands. We considered our lives would be in danger. I was surprised when I came into the place to see the people with assagais in their hands. Col. Sutton, with some Cape Corps, escorted us an hour's distance. The Fingoes particularly marked out Botha. They said that at the fight at Fort Beaufort he had been there. They said this loud out in Dutch. I heard it myself. Botha and I were together. I saw no other act of hostility against Botha. We got back to Philipton next day, and Botha continued to reside there from that day until the day of the General's arrival. I was in the habit of seeing him daily. I think it was on a Saturday when the General arrived, and I went to meet him. It was the day of the Fort Armstrong and Balfour fight. I think it was about 9 o'clock when we went out to meet the General. I returned late at night. I remember the day General Somerset came to Philipton. I do not remember what day of the week it was. Between the day when I went to Fort Armstrong and returned in the evening, and the day when the General arrived at Philipton Botha had continued to reside in Philipton. The last time I saw him was the morning the General came. I saw him at the time I was ready to go to meet the General, just before I left. He had been with me some time before that morning. Before the day the General came to Fort Armstrong. I had heard that the General was likely to come in that direction, but the day was not certain. Botha had told me, before the General came, to tell him that if he came with the Fingoes he would not remain, but if he came with the soldiers he would. He told me this several times. He told it me when we first heard it was the General's intention to come. This was after we came from Beaufort. The General came the first time and turned back above Lushington. This was a short time before he actually came. When I saw the General at Fort Armstrong,

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I spoke to him about Botha. I told him, when he asked me where Botha was, that I had a message from Botha, and I told him what Botha had told me to say. That was on a Saturday, before the General came to Philipton. There were a great many persons present, who, I think, must have heard the message. I did not see Botha again at Philipton after the General came there. I next saw him at Eland's Post, after the General had left for Lushington; I cannot say for certain. I think about three days. I do not recollect the day of the week. He came in after the General had left. I cannot say that it was the next day; I think two or three days. Botha was some days at Eland's Post before he was sent to Fort Hare; I do not know how many days; I think less than a week.

[Cross-examined by the Attorney-General.]—Some of the people of my field-cornetcy went over to the rebels, but the greater part remained loyal. On one of the occasions when I went to the rebel camp, I went by General Somerset's orders to read a proclamation, and try to bring the people to a better mind. I sent a report to the General of what I had done. Young Mr. Read drew it up for me. The day that Uithaalder's commando came to Fort Armstrong, Botha had a gun and was ready to fire on the rebels; but there was a commandant, and the commandant gave no orders. We were stopped by reason of receiving no orders. I do not know that Botha asked Groepe for orders to fire. As far as I know none of us asked for orders. We were all ready to fire, but we must have orders from the commandant. Our guns were loaded. I know Hermanus Lotz, the provisional field-cornet. He did not ask Botha in my presence for leave to fire. Botha wanted to fire at the time when Uithaalder was in the fort. I know that David Jantjies came over with a message from Uithaalder for Groepe to come and speak to him, and Groepe, Botha, and I went over and had a conversation with him. ' It was after this that Botha was ready to fire. Botha said to me, he thought the order to fire ought to be given. I could not do otherwise than wish that the order should be given. Groepe, Botha, and I were all good friends. The commandant was there, and I heard people say to him that it was no time to fire. He said nothing. I do not know why he did not give the order to fire. I was appointed assistant commandant, Botha was not, that I know of. We were all, Botha also, in the habit of frequently going to Fort Beaufort before the war. When we left Fort Beaufort after escorting the magistrate, Botha and I rode together. We rode as far as Mr. William's old school; after that we separated. There was a clump of settlers behind us. So long as Col. Sutton was with us we rode together. After the Colonel left there were no settlers behind us. When we separated we were not far apart; about so far as the jetty from here (a quarter of a mile.) We separated because we were chased by the settlers. I did not hear a shot fired. We were racing, and I was amongst stones part of the way. We first rode abreast and then separated and only met in the evening at twilight at Blinkwater. I was there first. I do not know of any shot having been fired at Botha. I heard that night from Botha himself that he had been fired at. My son David was with me, and he said he

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also had heard a shot fired. Botha said it had been fired at him. There were others riding on one side. On the day the General came from Fort Armstrong I went to meet him. I did not see Botha that morning. I went with young Philip Valtyn. We found the General near Fort Armstrong. No harm was done to us, but a captain of the levies brought me safe to the General. The troops were still marching on the fort. The Fingoes seized hold of the bridle of my horse. One old Fingo said, "This is Fourie, let him alone," but they would not listen until the officer drew his sword and took me to the General. This was before the storming of the fort. The day I went to meet the General coming to Philipton, — I was accompanied by young Mr. Read and John Fourie, my son. Botha had given me a message to be given to the General as soon as I saw him. When Botha told me he was going away, I told him he ought to remain, as there was nothing to be afraid of. I remember the General appointing me field-commandant. (The Attorney-General here read the order, dated February 7, appointing the witness special field-commandant on the ground of his good conduct and services during a period of 40 years,—commanding all the inhabitants of the district to obey him as such, and giving notice that all persons who did not repair to the places appointed should be treated as enemies.) Botha was acquainted with this order, and knew that all who did not come in to Philipton would be treated as rebels. On the Tuesday, when I went to meet the General, I cannot remember whether I advised Botha to accompany me. When I saw the General, he asked where Botha was, and I told him the message. I afterwards told Botha that the General had inquired after him.

[The Chief Justice.]—You remained of course at Philipton from the Saturday till the Tuesday when the General came?—Yes.

Did you go to church on the Sunday? Did you see Botha that day?—Yes, in the morning before church time.

Did you only see him once that day?—Only once, I was a little unwell, and went to lie down.

Did you see him on Monday?—Yes, once. I cannot recollect whether it was morning, noon, or night, but I am certain I saw him that day.

Did you understand that he was living in his house as usual in Philipton?—Yes; but I do not know whether he was in Philipton the whole of that day.

Did he say where he would go to?—No.

Did it ever come to your knowledge where he went?—No.

As long as he was absent you don't know how he lived?—No.

Did you go with the General to Eland's Post?—Yes.

Had you any communication at all with Botha after you saw him while mounting to go to the General's?—No.

Did you more than once advise him to go and see the General?—I think I only did it once.

Did you see him come into Eland's Post after the General had left?—No; I saw him after he was in.

Was he on foot or on horseback?—On horseback.

Had he a gun?—Yes.

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How do you know that it was his gun?—I had seen it before.

What kind of gun was it?—A flint gun.

Did you have any conversation with him after he came to Eland's Post?—Yes, I told him that the General was displeased with him for going away; but he always told me he was afraid of the Fingoes.

He was a prisoner at that time?—No; when he came, and I took him to Capt. Fisher, he was at liberty.

Had he come in of himself, or did some persons bring him in?—He came in himself.

Were you with him when he was taken to Capt Fisher?—Yes.

Did he say to Capt. Fisher that he came in to surrender?—I cannot say.

Do you know of Botha's having visited the rebel camp alone frequently?—No; I have heard it from another source.

At the time you heard it, you did not believe that he did go?—I did not believe it. All that I know against Botha is, that I missed him the day the General came to Pliilipton.

Did you learn from Botha at all where he had been during his absence?—His wife told me ——

That is out of the question; we cannot hear it.

[Mr. Watermeyer.]—As there has been possibly some imputation thrown upon Commandant Fourie, from the fact that rebels had sent to him for gunpowder, perhaps your lordship will put a question upon that point.

[Chief Justice.]—You do well, sir, to remind me of it. Do you recollect, Mr. Fourie, some persons coming to you from the rebels to ask for powder?—Yes.

When?—Two or three days before the General came.

Who came for powder?—Willem Uithaalder sent some of his men to me to ask for gunpowder.

How many many men came?—Three men.

Did they say how much he wanted?—No, they only asked for gunpowder.

Were other persons present?—I think Jan Fourie was there and Andries Hatta.

And Botha, was he there?—No.

I suppose you gave him a short answer?—I said I won't do it.

I wonder you did not say you would give them some from the gun's mouth?—I had powder there, and if they had attempted to take it, either they or I should have remained on the threshold!

I believe it; and I am glad to say I think you have sustained as good a character in the court during this examination as you have borne for the last forty years.

Commandant GROEPE examined.

[By Mr. Watermeyer.]—I am field-commandant and justice of the peace for Kat River. I know Andries Botha. At the outbreak of the rebellion, as he was in his house alone with his wife, I spoke to the magistrate that he had better come to Fort Armstrong, and it was arranged that he should sleep there three days in the week and Fister three days. While he was in Fort Armstrong he lived in my house. I sent Botha to Hermanus

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shortly after the war broke out, once more to try and attempt to persuade Hermanus, for I was too ill to go myself. I remember the day Uithaalder came to Fort Armstrong. Botha brought the report that the rebels were advancing. I understood that he had asked the magistrate that morning to go to his garden. He had not been long absent before he came galloping in, to give the intelligence. He came in crying out, "There is Uithaalder coming on with all Kafirland on the top of us."

[Chief Justice.]—How did he conduct himself that day?—He conducted himself the same as myself and the others.

Had you any reason to doubt his being faithful to the government from his conduct that day?—I had not the slightest doubt of his fidelity to the government; only three days before, he had seized from one of the rebels a saddle which had been stolen by them from Mr. Macmaster.

[By Mr. Watermeyer.]—I remember the morning seven horses were taken from the Fingoes, at Fort Armstrong. Botha was there before the plundering of the seven horses. I will explain. I was lying in bed; he came to bid me goodbye, and said he was going to Eland's Post, where the magistrate was and his family. Whether he went that moment I cannot say. I was sick in bed. After that the seven horses came. No complaint was made to me by the Fingoes; but four men who had taken horses came before me, Lotz, Hans Groepe, and two others. I saw nothing of what was done. I told them to restore the four horses to the Fingoes; and I told Lotz to take care of the other three horses and put a guard upon them. He went away and said he could not find the other three. I said, take these four horses to the magistrate. No Fingo came to me to complain; I asked where they were, I was told that they were gone to Philipton. After I had told Lotz to take these horses to the magistrate, he said he would keep one until he got his own. I told him by no means to do anything of the kind. I never gave him permission to keep the horse,—not in the least; I only received them and took charge of them. I remember the day when the three horses were taken away. I never will believe that Botha was there that morning, I caused vigilant search to be made for him because the Fingoes came to complain. I even asked my clergyman to search for him, but he was not to be found anywhere. Considering how very early it was in the morning, and that he had left only the afternoon before for Philipton, I never will believe that Botha was there when these three horses were taken. I did not see Botha at all there that morning. I remember the day Gen. Somerset came to Fort Armstrong. Lotz was there that day. I saw him about 7 or 8 o'clock. He rode off to Philipton by the direct road, and we shortly after heard of his arrival there. I saw him gallop out alone.

[By the Attorney-General.]—I was told by one of the three Fingoes that Botha had plundered him, that is why I took so much trouble to search for him.

Had Botha your permission to go to any rebel camp, except when he was sent to Hermanus?—I only know of his going to Hermanus, and of his going with the clergyman to Uithaalder.

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Was it not the custom of loyal men at the fort to report themselves to you on quitting it?—Yes.

Was it an order?—Certainly, an order in writing.

Did that order embrace the field-cornets also?—All alike.

Did Botha report himself when he used to go out?—He never went to his own house without leave from me or the magistrate. He never left the fort without asking permission.

That is, to your knowledge?—As far as I know he never did.

After the rebels were at Balfour, did you never give him permission to go there?—During that time he was not with me, but with the magistrate at Philipton.

When the General came, a great many people went to Philipton?—Yes.

What path did Jordaan take?—The same path as Lotz, the direct road from Fort Armstrong to Philipton. What they did when they came into the field, I know not.

Are you quite sure that Jordaan did not go by the Balfour road?—He could not; it was impossible, for the fight was there; but he must take the Balfour road a little way until he gets to the Philipton road.

Do you know anything of an application that was to have been made to you to appoint Botha assistant-commandant?—I heard of it.

Did you approve of it?—If I had approved of it, I would have appointed him.

[Chief Justice.]—That is the Hottentot mode of answering a question—to give a reason for the answer, instead of the answer itself.

[Attorney-General.]—You gave evidence before the court-martial in several of the cases at Fort Hare?—Yes.

And you gave evidence in the case of Hans Botha, Andries' son?—Yes.

Do you remember that Hans being at Fort Armstrong when his father, Andries Botha, was there?—Yes, he and others came in with Uithaalder's commando.

Did you hear Botha say anything to his son?—He spoke at a distance to his son. He said to him, "I never thought that you, with your gun on your shoulder, would ride up towards your father."

What did the son say to that?—He answered him but a few words. I was engaged with Uithaalder, and did not pay attention. It was something to this effect, "Father you have bred me up to be a man." (Or, "Father it is your own bread I have eaten.")

The witness, who seemed to be in a very feeble state, requested to know whether he might be allowed now to return home.

Attorney-General said, he was extremely sorry to have brought the witness such a distance in his state of health. When he saw the deposition, he had perceived that he would not want him for the prosecution; but Botha said he wished him called, and therefore he had been brought down.

The Chief Justice said, it was a great pity that this man had been brought down, considering what they had got from him. Looking at him, indeed, it was not difficult to account for much that had taken place in the Kat River settlement.

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JAN BRANDER called and examined.

[By Mr. Watermeyer.]—I am a retired sergeant of the Cape Mounted Rifles, and receive a pension. I know Andries Botha. I remember the fight at Balfour. I was at Philipton that day. I went out that morning, after the time when the cattle are let out of the kraal. I went out to look for a horse. I went through the garden of Bruintjes, and towards the place called Spion Kop, and stood on a ridge, and looked round for the horse. I did not see the horse. When I left that place I saw two persons advance on horseback. I went up to them. Before I got to them they had dismounted and were standing on the ground. I saw they were Andries Botha and Koert Plaatjes.

[Chief Justice.]—Were they armed or unarmed?—I saw they had one gun.

Who had the one gun?—I am not certain.

Had they bandaliers?—No, I did not take notice whether they had bandaliers. I was nearest to Botha, and he had no bandalier that I saw. When I saw Botha, he was sitting down, preparing to smoke.

How far was that from Philipton?—Not half an hour from Philipton, on foot.

You were in the fields; was there a road?—There is a footpath.

From Philipton, can you see Spion Kop where you and Botha stood?—Yes.

Did you see a yellow horse there?—Yes.

What did you see of the yellow horse?—It was saddled; there were three horses, and all saddled.

Did you make any remark about the yellow horse?—I spoke; I asked Plaatjes, "Where did you get such an ugly horse as that?" He said, it was not his, but Botha's; and Botha said he had got the horse with the cattle.

What cattle?—There were Kafir cattle running about; the Kafirs were driving the cattle and going off with them.

What kind of a horse was it?—It was a yellow horse, and looked as though it had been overridden and knocked up. He said he found the horse saddled as it was. It had a new saddle.

Does this mean that he took the horse from the Kafirs, or that the Kafirs gave it to him?—He did not tell me how he got the horse, or whether the Kafirs had given it to him; but he said he got it amongst the Kafir cattle.

[Mr. Watermeyer.]—Did you ever see that horse again?—No.

While you were speaking with Botha, was the fight going on at Balfour?—The fight was going on.

Did you ever see Botha again?—Yes, not half an hour elapsed before I saw him at Philipton.

Where did you last see the yellow horse?—When I went to Philipton I saw the yellow horse come out of Piet Bruintjes's house; a child was mounted on it, and riding it into Philipton.

[Cross-examined by the Attorney-General.]—I was carried against my will by Hermanus to attack Fort Beaufort. I and four others got away, and were again made prisoners by Uithaalder, and taken to his camp. When the proclamation was

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sent, I came in to Fort Armstrong. I know Botha well. I knew him before the war. The firing had begun at Balfour when I went to get my horse, but not at Fort Armstrong. Spion Kop is between Philipton and Balfour. Botha and Plaatjes came up together, riding one behind the other. Botha led the yellow horse, and when they dismounted he gave it to Plaatjes. I could not see people fighting, but I could see smoke. I thought the yellow horse was Plaatjes', because he had it in his hand. I understood him that Botha had found it among the cattle. I saw three droves of cattle, Kafir cattle. I call them Kafir cattle, because there were Kafirs driving them. Two droves were about half a mile off, the other was closer in, about as far as from here to the parade. The Balfour church was more than half an hour on horseback. Botha did not tell me how he came among the Kafir cattle. I did not ask him. The cattle were far from Balfour. The Kafirs were flying with the cattle, and there are plenty of thorns. The Kafirs I saw were on foot. There were horses also. I did not notice, if they were saddled or not. I do not know the child who was riding the yellow horse. I never saw the horse again. I saw Botha again at Philipton the same day. I also saw him on Sunday. I did not speak to him. He went as far as the church. I saw him on the Monday twice, as well as I remember. I asked him if he had seen my horse, he said it was down at the saw-pit. I said nothing to him about the yellow horse. I saw him on the Tuesday standing at his house, before sunrise. I did not speak to him. His house is a long way from mine. I did not see him on the Wednesday. The General came in on Tuesday. I heard that Botha had left then.

[Chief Justice.]—Do you know Stoffel Botha?—Yes.

He was wounded in the foot?—Yes.

Was he at that time in Philipton?—Yes; but after he was hurt I never saw him.

Do you know when he left Philipton?—No, I never inquired after it.

JAN MATROOS examined.

[By Mr. Watermeyer.]—I am the proprietor of an erf at Kat River, and am now in the levies. I know Andries Botha. I remember the day that Gen. Somerset came to Fort Armstrong. I then went from Fort Armstrong to Philipton. I was not at Philipton when he came; I was then in the field, at the place called Uitkyk. I fled there out of Philipton, because the Fingoes were firing on their advance to Philipton. More people besides myself fled. I was afraid, and therefore I ran away. I saw Botha that day in the evening at twilight. Isaac Arends was with me. He was also afraid. Botha joined us in the evening. We remained that night together in the field. Botha had no blanket. He had a horse and a small gun (*roertje*). The next day we were all together still. A large patrol of Fingoes and Cape Corps came out, and we crossed over the Maasdorp stream, and sat down on the hill on the opposite side. We were afraid of the Fingoes. When the patrol went away we returned to Spion Kop. We kept together the whole day. We afterwards went to Eland's Post to give ourselves up. Botha went with us. We saw Hatta at a place called Hamelsnek. I cannot say what day this was.

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It was the day before we went in to Eland's Post. Botha was with us all the time, from the time he joined us till we went to Eland's Post. We had a conversation with Hatta. He advised me and Botha to go home. We said we would wait till the Fingoes left, and then we would go home. We had slept out four nights before we went to Eland's Post.

[Cross-examined by the Attorney-General.]—My name is not Jan Joris, but Jan Matroos. They call me Joris sometimes. I left Fort Armstrong the day the General came there; I think about 9 o'clock. The General had come up, but there had been no firing at Fort Armstrong before I came away. I went to Philipton to remain there. I had no idea of leaving Philipton until the Fingoes came over firing, and frightened me. I lived in Christian Zeeland's house in Philipton. Zeeland was at Philipton the day the General arrived. I told him I was going. I cannot say that he was frightened. Arends did not go with me. He also fled from Philipton. I met him at the Spion Kop. We had not agreed to meet there. It was about 2 o'clock. It was twilight when Botha rode up to us. I had seen him at Philipton, but never spoken to him that I remember. We three slept at Spion Kop that night. We did not eat anything that night. Next morning he crossed the River and got some mealies. We lived on mealies all the time we were out. We got nothing else. We got them from several places. I had a gun. Arends also had a horse and a gun. I had no horse. I can swear that we three neither separated nor spoke to any one till we met Andries Hatta. We saw no one in the field. We did not wait for Andries Hatta coming. We were near to Eland's Post when we met him. We went there because we could not remain in the field. We did not go with Hatta to the post; he was in the field the whole day with the cattle. Hatta advised us to go in. We were afraid of the Fingoes. Hatta told us the General was going, but that he had not yet gone. The Fingoes had left when we went in. We were not two hours' distance when we saw Hatta. Botha kept the horse all the time with him.

The Chief Justice said he could not comprehend—the jury might—why this man should go into the field if he did not mean to join the rebels, and why he did not join the rebels when he did go into the field.

Mr. Watermeyer said, he thought he should be able to explain this to the jury.

The Rev. James Read, jun., examined.

[By Mr. Watermeyer.]—I am a minister of the gospel, and a missionary of the London Missionary Society. Before the war broke out I resided at Philipton. I have known Andries Botha 18 years. He always bore a good character up to the rebellion, and I always considered him a loyal man. I remember Fort Armstrong being proclaimed the general rendervous. I remember the time when Botha came to Fort Armstrong. I met him on the 2d January going to Fort Armstrong on horseback. I asked him where he was going to, and said I was going to Blinkwater. He said he did not think it would be safe for me to go. I said I must go. He intimated that there might be danger, as all his people had left him, and he suspected that they had turned rebels, except some old

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men and women who were still at Buxton. He said "My children are all gone, and my son Klaas is gone. The firing you hear in the Winterberg, my sons may be there too, and I am going to Mr. Wienand's to report it." We heard at the time a tremendous fire at the Winterberg. I went to Blinkwater, and found the Hottentots in a state of rebellion. I returned in the evening, and reported to Mr. Wienand what I had seen. Botha then went to Buxton and brought his family to Philipton. I know of Botha being sent to Hermanus by Groepe, early in the rebellion. My father, myself, Fourie, and others went several times to the rebel camp. Botha went with us three times. On all three occasions he spoke to the people, and admonished them to return to their allegiance and duty. I remember the day of Uithaalder's demonstration at Fort Armstrong. I saw Botha riding into the Fort. During that day his conduct was as loyal as that of any other man who was present. I remember the English leaving the place. I accompanied them part of the way. I returned to Fort Armstrong on the morning of the 24th of January, from Philipton, about 10 o'clock. I saw Botha there that day. I left Fort Armstrong that afternoon, with my father, Willem Goezaar, Willem Valtyn, and Andries Botha. I saw Botha late that evening at Philipton. He resided near us, in the same line of houses, and I saw him daily, until we escorted the magistrate to Fort Beaufort. I remember Christian Zeeland coming to Philipton with the report of the three horses. I had seen Botha that morning before Zeeland came, about 8 o'clock. The Kat River Loyal Association was established on the 26th of January, the Manifesto having been drawn up on the 25th. Botha was a member of that association. I accompanied Mr. Wienand's escort to Fort Beaufort. They did not stay at Fort Beaufort that night, in consequence of the excitement which prevailed in the town, and the violence of the Fingoes and some of the inhabitants of the place. I considered there was danger in remaining. Botha and Peffer were marked out; Botha particularly. I saw it myself. Botha had a yellow handkerchief round his neck. I saw the Fingoes point to Botha's yellow handkerchief, and say "That's he, that's he!" in a violent manner, shaking their hands at him, in the way these people do when they threaten any one. They were not then armed, but I saw they were armed afterwards. Col. Sutton said, "Mr. Read, you had better take your men away, or I may be placed in a very difficult position." We went off so hurriedly that we were obliged to leave dinner, to which we were just sitting down. The majority of the party rode out with Col. Sutton and some of the Cape Corps, and I followed after. Col. Sutton was still with the party when I joined them He said he had wished me and the people to remain that night, in order to form a bond with the Kat River loyalists, and strike terror into Hermanus; but in consequence of the state of excitement in the town, it was impossible for us to remain. We slept half way that night, and went to Philipton next morning. Botha resided at Philipton from that day till Gen. Somerset came there. I remember the day of the fight at Balfour. I saw Botha about 11 o'clock that day; about the time the General was beginning to bombard Fort Armstrong. I heard the firing of can-

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non. I remember the Tuesday the General arrived at Philipton. Between the 22nd and the 25th I saw Botha at Philipton. I do not remember seeing him on the Sunday. I was so much engaged that I was scarcely out of the house that day. I saw him on the Monday and also on the Tuesday morning. Mr. John Green resided in one of my out-houses. He was out on the day of the bombardment of Fort Armstrong; but on the day that the General was first coming to Philipton and turned back at Fort Lushington,—which threw us into great embarrassment in the apprehension that he was going to leave the loyalists unprotected,—Green kept close in the house, or in my father's loft. I used to see him frequently about the place, but that day he did not make his appearance. When the General afterwards came to Philipton, he was working in the loft and kept close. I did not see him abroad as on other days, so that his not seeing Botha on Sunday and Monday is not saying much. About the time General Somerset was first reported to have moved towards the Kat River, the 14th or 15th of February, my father, expecting the General to be in the place next day, said to Botha, "Well Botha, as soon as the General comes we will go out and meet him." Botha replied, "No, sir, I shall not go, I am afraid of the Fort Beaufort Fingoes and English." Some Fingoes who had brought us letters, brought us the news. My father said Botha was very foolish to talk in that way. He said, "You talk in a very easy way, sir; you don't know what these people did to me." My father said the General would not be pleased. Botha constantly expressed the same determination before the General arrived. Botha was absent when the list was called over on the Tuesday. The General went to Eland's Post on the Thursday. Bruintjes, and an old Cape Corps serjeant named Syster, were also absent. I went with the General to Eland's Post. I next saw Botha again, to the best of my recollection, on Saturday, the 1st of March, in the afternoon. I had been out in the early part of the day, and on my return I heard that Botha had come in. I saw him again, I think, in the afternoon of Sunday, the 2nd of March, when the party which was to take him on to Lushington had returned with him. I was one of the party who went with him to Fort Hare, on Monday, the 3rd.

[Chief Justice.]—Mr. Read, did you attend the court-martial proceedings at Fort Hare?—I did, my lord, all of them.

Botha was not tried?—No.

How was that?—I cannot say, my lord; I heard that people had been invited to give evidence against him, but none had come forward.

[Mr. Watermeyer.]—Will you tell us what roads there are from Fort Armstrong to Philipton?—There is one leading direct to Philipton, another leading by Balfour, and another below Balfour. (Mr. Read here handed in a sketch of the roads.)

What sort of country is it about the school at Balfour?—Just about the school there are a few bushes. Standing at the school and looking towards Balfour you have Mr. Thomson's house, with the gardens and trees. Next comes the garden of Piet Basson, thickly planted with peach trees and weeping

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willows; and then towards the left from the school, you have other gardens, thickly planted with peach trees. The gardens would be the only bare space to be seen.

[By the Attorney-General.]—You have known Botha for 18 years, and have always had a good opinion of his loyalty?—Yes.

But you will agree with me that no disloyal man in the Kat River would make either you or your father the confidant of his disloyalty?—Decidedly not.

Did you see much of Botha during 1850?—I did occasionally; but he lived at a distance.

He lived at Buxton and you at Philipton?—Yes.

Who officiated at Buxton?—Mr. Van Rooyen and myself alternately.

And he attended the service there?—He did.

Do you recollect having any communication with Botha about the expulsion of the Ghonas from the Kat River?—He spoke to me on the subject.

Do you not recollect that Botha had a very strong feeling on that subject?—I heard that he expressed his feelings very strongly on one occasion, but I was not present.

[Chief Justice.]—As he spoke to you, you knew his feelings?—I knew that he felt very much for the Ghonas.

[Attorney-General.]—Perhaps the occasion you refer to was his visit to Sir Andries Stockenstrom?—No, it was when one of the Kafir policemen said to Botha,—"As you burnt us out of the Amatola so we now burn you out of the Blinkwater." I was not present, but it was mentioned to me by his wife in his presence.

I know, Mr. Read, you were of opinion that Uithaalder's commando ought to have been attacked on the 22nd of January?—I was; and I could give my reasons for that opinion.

We do not want them. Have you since seen occasion to modify that opinion?—Yes; Groepe has since told me that he knew there were rebels in his own camp. I said, "You are wiser than I was; and on Groepe's statement I have modified my opinion."

After the escort returned from Fort Beaufort, having slept at the Blinkwater, did you hear that night that Botha had been shot at?—Yes.

From himself?—No, he did not speak much; but I heard it from three other parties.

Did they say that they had seen, or heard it?—Hans Geswint, now one of the convicts at Bain's Kloof, and David Fourie said they heard the shot in the direction of Botha.

You have said that Botha told your father that he would not go and see the General; but you have not said that he stated he would go into the bush?—He said that he would go out of the way when the General came with the Fingoes.

Was that after Gen. Somerset's order of 7th February was known in the Kat River?—It was.

And that order declares that those who were not found at Philipton would be treated as enemies?—Yes.

I presume that your father pointed out to him the danger he would incur by absenting himself?—My father remonstrated with him, and pointed out the impropriety of his going away, and was very earnest about it; but I cannot say that he used the word danger.

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You have published some letters in the *Advertiser*, in Cape Town, which have since been republished in a pamphlet shape?—Yes, errors excepted.

I should wish to ask you a question in reference to a passage in one of these letters.

[Chief Justice.]—First let me ask, would there have been any danger in Botha's staying at Philipton, just showing himself to the General, and remaining in his own house while the Fingoes were there?—Botha was under the impression that the General would not be able to command the Fingoes while they were at Philipton: and when they came to Philipton he could not command them.

I asked you, do you think there would have been danger to Botha if he had kept at home?—If Botha had remained in his house I apprehend he would have been in the greatest danger, for the moment the Fingoes arrived, they asked, "Where is Botha?"

Your father could not have been of that opinion when he advised Botha to stop; and Fourie likewise advised him, so that your opinions are in conflict?—They have their opinions on this point, and I have mine.

Then you think Botha did right in going away into the bush?—I did not approve of it. I would not have advised him to go.

You think he should have exposed himself to the danger rather than escape from it?—I think he should have tried to see the General, and if he had met the General he would have been safe; but if the Fingoes had seen him first he would have been in great danger.

Do you mean to represent that such was the laxity of Gen. Somerset's command, and such the state of the Fingoes that Botha would not have been safe in his house at Philipton?—I mean to say that General Somerset was able to control the military and the burghers, but he could not control the Fingoes. I mean when they came to Philipton.

I am speaking common sense, but I cannot think that you are?—Your lordship does not understand me. The Fingoes do not go under a commander; they precede the regular troops, and generally spread themselves over the country. The General halted on a hill about half a mile off. The Fingoes came on in two divisions surrounding the place, and they entered the village before the General. They were sent on to bring the cattle into Philipton.

What, a small detachment sent forward to guard the cattle?—No, my lord, there was a large body of them.

[Attorney-General.]—Do you know of any man who was injured by the Fingoes that day?—I know that they fired at an old man named Mangola.

Did you see it?—I saw the shot go off.

[Chief Justice.]—It might have been an accident, or at some animal.

[Attorney-General.]—Am I to understand that as Botha had told you and your father of his intention to absent himself, you had no suspicion of his being less stanch to the government than before?—I was grieved at the old man's going away; I thought it a weakness, but I believed that it was the result of fear of the Fingoes.

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[Chief Justice.]—You have not given us the answer. Did you think him a less stanch man to the government than before?—I did not. I thought he would as readily fight for the Queen as before. I believe that he spoke from fear and not from disloyalty.

Did you think he went into the bush from a dread of the Fingoes?—I certainly thought so, my lord.

[Attorney-General.]—From the pamphlet of which I have spoken, I read a passage to ask an explanation, "As to Botha I have reason to believe that while away from the place, he never mixed himself up with the rebels, who now tried everything to get him to join them as their general, but he flatly refused." What is your reason for thinking that they tried hard to get Botha for their general when he was out in the field?—His wife told me.

Then you say, the Fingoes were as much opposed to Peffer as to Botha?—The English were excited against Peffer, who was said to have been at the attack on Alice, and the Fingoes were excited against Botha, who was said to have been at the attack on Fort Beaufort, and whose son was in prison there. Shortly before the war broke out, in October or November, 1850, Botha gave up to justice one of his sons on a charge of cattle-stealing, and was a witness against him at the ensuing court at Graham's Town. The son, however, made his escape from prison, and is now amongst the rebels.

Have you ever seen Stoffel Botha, who was wounded in the foot, since he received the wound?—I have.

Do you know that he was constantly visited and supported by his father, at Philipton?—I am not aware; but I take it for granted that he visited him.

You must know that he assisted and supported that son, and knew where he got his wound?—I take it for granted that he did so, though I could not prove it. But Botha brought the wounded son to Philipton with the sanction of the magistrate, Mr. Wienand.

He was brought there for the purpose of taking the oath of allegiance under one of the amnesties?—Yes.

Did he take it?—Mr. Wienand and myself went there for the purpose of administering it, but he was either in so much pain, or else he was surly; and we left it for the present.

He never took it, but was removed to Philipton, and took a house there; and do you not know that he was constantly visited and supported by his father?—I should suppose so, but I do not know it.

[Chief Justice.]—Where was he brought from?—From Fort Armstrong.

[Attorney-General.]—It is right, in justice to the magistrate, to ask, do you not know that Botha said that his son asked for permission to go to Philipton to take the oath there?

[Chief Justice.]—That is not material. The man did not take the oath, and he is now amongst the rebels; but Mr. Wienand thought he had acquired a loyal subject. Was he taken back to Fort Armstrong after he left Philipton?—I do not know. He was taken away without my knowledge.

[Mr. Watermeyer.]—Do you know that Stoffel Botha had a horse of his own?—He had.

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The Chief Justice said he would not ask Mr. Read any further questions now, but he would possibly ask him one by and by.

Mr. Watermeyer said, the only further evidence he had to offer was, a statement of Col. Sutton, taken before Mr. Wienand and himself, and admitted by his learned friend. He would then call Sir Andries Stockenstrom to speak of the defendant's previous services and character.

The following statement was then read :—

"Statement of William Sutton, Esq., Lieut.-Colonel of the Cape Mounted Rifles.

[To Mr. Watermeyer.]—"I commanded in the Kat River "in the late war, from April, 1846, to March, 1847. Andries "Botha was particularly under my eye and command up to "February, 1847. During this time he did his duty in the "most zealous and efficient way, and rendered me more as-"sistance than any other of the field-cornets of the Kat River "settlement. In consequence of his good and efficient con-"duct, I got him appointed assistant field-commandant during "the then hostilities. I commanded at Fort Beaufort when "field-cornet Botha helped to escort to that place Mr. Wie-"nand, the magistrate. This was either in January or Febru-"ary, 1851. The arrival of the escorting Hottentots created "great excitement amongst all the inhabitants, especially the "Fingoes, so much so that I thought it advisable that the "Hottentots should immediately quit the station. The Fin-"goes generally, if not universally, had taken arms, and I "feared for the lives of the Hottentot escort, did they not "leave. I rode with them in person about three miles out of "town to protect them by my presence. My advice to quit "the station was given to the Rev. J. Read, jun., and Mr. "John Thomson, who accompanied Mr. Wienand's escort. "When the court-martial sat at Fort Hare for the trial of re-"bels, Botha was in confinement. I was president of the "court-martial. I remember that Botha was released from "confinement at Fort Hare. I cannot say by whose order "this was done, nor under what circumstances. I concluded "in my own mind that he was released from want of evidence "against him."—[To the Attorney-General.]—"Prior to "1846, I had no knowledge of Botha, nor except upon the "occasion of his coming to Fort Beaufort with Mr. Wienand, "any knowledge of him since February, 1847. Generally "speaking, the whole of the Kat River Hottentots behaved "admirably in 1846 and 1847. I am aware that many who "behaved well have been engaged in the late rebellion."—[To Mr. Watermeyer.]—"I am aware that there is upon the "part of the Fingoes the strongest feeling of enmity against "all the Hottentots. I have known them frequently refuse to "be associated with the Hottentots in doing duty. This "strong enmity arose during the present war, but during the "war of 1846 there was a feeling of jealousy and dislike.—"Wm. Sutton, Lt.-Col. C.M.Rifles.—Cape Town, 6th April, "1852."

The Chief Justice said, this was not sworn, and he could not receive it. He had no idea that it was not a deposition.

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Sir ANDRIES STOCKENSTROM called and examined.

[By Mr. Watermeyer.]—I was Commissioner-General of the Eastern Province from 1828 to the end of 1833, and Lt.-Governor of the Eastern Province from February, 1836, to near the close of 1839. I know Andries Botha perfectly well. I have known him, for certain, since 1829, the date of the establishment of the Kat River Settlement. I appointed Botha the head of a party in Kat River, upon the particular recommendation of Mr. Hart, in whose service, or rather in the service of government, he had been for many years. Mr. Hart stated to me that he had been long a most faithful servant of the government at the Somerset farm, and begged me to provide for him one of the best allotments in the Kat River, which I did. Up to the close of 1831, I was constantly and directly connected with the Kat River Settlement; Commandant Groepe and he were my principal leading men there, and I marked their conduct, of course, most particularly. Botha's conduct was exemplary in every respect. In 1830, I had occasion to send him into Kafirland at the head of a detachment under Col. Somerset; and on that occasion he fully maintained his good character. I never had the slightest doubt of his loyalty; on the contrary, I had the strongest possible reliance on his adherence to the government. He is certainly the last man I should expect to be a rebel. My direct connection with the frontier ceased in 1833, and I went to Europe and knew no more of him till 1836. After my return, I received the highest character of Botha from Sir Benjamin D'Urban and Colonel, now Sir Harry Smith, who had appointed him field-cornet in my absence, on account of his excellent conduct and services during the war of 1835. I was Commandant-General during a portion of the war of 1846, and had again an opportunity of observing his conduct then. He was particularly recommended to my notice by Col. Hare and Col. Sutton, in consequence of his conduct at the retreat of the troops at Block Drift. In consequence of their recommendation I took Botha into Kafirland with me. His conduct was most exemplary, especially in the Amatolas, and contributed most essentially to our success. If the details would be received I shall be most happy to furnish them.

The Attorney-General said the details were not admissible.

The Chief Justice said, he thought that no character could be carried higher than that which Sir Andries had already given.

[Mr. Watermeyer.]—Do you know of your own knowledge what was the feeling between the Hottentots and Fingoes before the war?—Before the war and since, the feeling is most bitter between the Kafirs, Fingoes, and Hottentots. I do not think that one is better than the other in this respect. They would do each other all the harm they can. They hate each other most cordially.

[Chief Justice.]—Do you think, sir, that feeling continues to the present day?—My lord, I have not been there during the war, but it must be now a great deal worse.

[Attorney-General.]—Since you ceased to be Commandant-General in 1846, I think you have not known much of the Kat River people?—Not much, but I am in a thoroughfare, and they pass backwards and forwards. I know, however, that

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after my retirement, Botha served under Sir George Berkeley with great credit to himself.

I presume, Sir Andries, from your knowledge of the Hottentots of Kat River, down to 1846, you considered them a loyal body of men?—I did.

You are now aware, to your great grief, as the founder of the settlement, that the great body of the Kat River people have turned rebels?—I do not know that. I know that a part of them have turned rebels; but I am not sufficiently acquainted with the details of the case to be able to declare the great body of the people rebels.

You remember Botha visiting you in July, 1850?—I do. The particulars of that interview was stated by me in a letter to Lord Grey, which you will find published in a blue book that you are probably acquainted with.

I have it here, sir. That letter contains an account of an interview between you and Botha in reference to a complaint which he made. Do I understand that you still consider this to be a correct account of that interview?—Most strictly correct. The last time I saw that letter was in London. But I believe I can be very positive as to the answer.

Several *Gazettes* containing proclamations and Government notices were then put in, and the court adjourned.

WEDNESDAY, 19TH MAY, 1852.

The Rev. Mr. READ recalled and examined.

[By the Chief Justice.]—I am aware of the robbery of the seven horses; but I was not present. It occurred on the 24th of January. It must have been about 10 or 11 o'clock that day when I arrived at Fort Armstrong. I was on my way and would have been there earlier, but I met some English women who were in danger, and I took them back to Philipton. I found Botha at Fort Armstrong. Some of the Fingoes had gone. I met four or five of them as I came from Philipton. I found Botha at Commandant Groepe's house. Groepe informed me of what had occurred. Botha was present. Groepe said nothing to me about Botha in reference to the transaction. I went that afternoon to Philipton with Botha. Just as we were leaving Groepe's house, Groepe said to me, "I want the old man to stay and assist me, but he seems bent upon going to Philipton." In consequence of this, I spoke to Botha, and tried to persuade him to remain; but he said, "I won't stay in this place, things don't go right." Groepe then asked me whether I could induce Fourie to come to his assistance; I said I would. I wish, with reference to my evidence of yesterday, to state that it was to the best of my recollection on the 23rd that I went with Botha to Fort Hare.

The Attorney-General put in the Government notice of the 7th February; and also the general proclamation declaring the Eastern Districts under martial law.

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The ATTORNEY-GENERAL said,—May it please your Lordship,—Gentlemen of the Jury,—Let me entreat your attention whilst I attempt to discharge the last act of my public duty connected with this protracted case. I am now to observe upon the evidence which has been given during the six long days which this trial has already occupied. Did I not speak in the presence of others whose responsibilities are even greater than my own, I might well, I think, be pardoned if I dwelt upon the difficulties which present themselves on every side as I throw my eyes over the wide field which I have to traverse. Those difficulties are, indeed, great. I fear lest, from defect of memory, important facts may escape me. I fear lest, from defect of judgment, I may fail in drawing just inferences from the facts which I remember. I fear lest, while urging upon your attention those points in the case which seem to me to make against the prisoner at the bar, I may appear to press too hard upon a man on trial for his life. I fear lest, in avoiding this grave error, or, to speak more properly, this great crime, I may commit an error scarcely less grave,—a crime scarcely less great,—by failing to administer, with proper sternness and determination, that portion of the public justice of the colony intrusted to my hands. All these things are against me. But when I turn from myself to the other parties to this solemn inquest, I seem to feel my burthen lighten. The friend who sits beside me, and who will address you for the prisoner, has laid upon him a weight still heavier than mine; and whilst I rejoice that such a weight is placed upon a man of sufficient strength to bear it, I can assure him that he has, in the performance of the most anxious duty of our anxious profession, my heartfelt sympathy. But if we, the advocates at the bar, have our responsibilities, greater yet are the responsibilities of his lordship on the bench,—for his will be the duty of laying before you the law and the facts, with such observations upon both as may assist, and, perhaps, to some extent, even guide your minds in coming to your verdict. And greater still than the responsibilities even of the judge, are the responsibilities of other parties to this important investigation. Gentlemen of the Jury, I now refer to you. You have endured, since the commencement of this trial, no small privations. You have been kept away from your homes, from your families, from your means of livelihood, from all intercourse with your fellow-citizens; and, seeing the manner in which you are watched and guarded as day by day you depart from this court to the place appointed for your sojourn, to be brought back again day by day with the same forms and precautions, a stranger to our laws and constitution might imagine that, instead of being engaged in discharging one of the noblest functions of freemen, you must yourselves be in confinement for some alleged offence. Gentlemen, I am not insensible, I assure you, to the privations which you have undergone. But your privations will, I am certain, in your estimation, dwindle into insignificance when compared with your responsibilities. In your hands, under God, are the issues of life and death. Should you convict an innocent man, the consequences to him must be terrible indeed. Should you acquit a man proved to be guilty, how will you answer for it

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to the widows and orphans who have been made such by him and his confederates, and to the public justice of the country, and to a just God? You have, indeed, a solemn duty to discharge. May you be enabled to discharge it in a manner which shall satisfy the oath which you have taken, and your own consciences,—delivering, should the evidence fail to satisfy you of the prisoner's guilt, a verdict which will send him from that dock to his family in safety;—delivering, should the evidence coerce you to believe him guilty, a verdict which will leave a man who, if guilty, is perhaps the greatest criminal that the recent rebellion has brought forth, to endure whatever consequences the laws that he has outraged may have provided for the punishment of his crime. Gentlemen, it is fit that I should tell you why this case comes to be tried by you. How is it that you are assembled here at such a great distance from the scene of action to try this man? Gentlemen, it was in justice to the prisoner. Upon the frontier,—where war and rebellion still exist, where the minds of the people are heated by conflict, and their judgments, it may be, disordered by passion,—how was it possible that this man should have a fair, dispassionate, and impartial trial? To secure such a trial a large expense has been incurred. Nothing has been left undone that could be done, in order to secure this object. The depositions of the witnesses for the prosecution have been submitted to the law advisers of the prisoner, that they might know what was to be proved, and be able to disprove it if they could. The prisoner was told to name his witnesses, and show that they might have evidence to give,—and all of them were brought down at the public expense. And it was no grace or favour to do this, but simply justice; for when a man is brought to trial seven hundred miles away from his place of residence, you must not bring merely the witnesses against him, but also the witnesses in his favour, so that he may have all possible fair play. But I will say this, that there has been evinced a sincere desire to give the prisoner a fair trial, and I do believe that the annals of criminal justice will not show a case where a fairer trial has been had; for were this the case, not of the humble Hottentot who sits there, but of the proudest member of the proud aristocracy of England, more, I say, could not have been done, nor could a Howard or a De Vere have answered for his life with more advantages. Gentlemen, let us shortly glance at the circumstances out of which this trial has arisen. The prisoner stands charged with having been engaged in what is commonly called the Kat River rebellion. The map, or plan, in your hands, and to which you have been constantly referring, shows the several places composing the Kat River settlement. In 1829, and for several years before, this district formed part of what was called the neutral territory, and the well-known Kafir Chief Macomo was permitted to occupy it during good behaviour. For his misbehaviour Macomo was, in 1829, expelled from the Kat River by the Commissioner-General, now Sir Andries Stockenstrom, and as this active and energetic officer was well aware that the country thus cleared would be occupied by Kafirs if it were not occupied by colonists, he determined to locate therein a large body of Hottentots. Thus the Kat River settlement was formed. From

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various quarters Hottentots poured in, and, after a time, the Settlement began to thrive. I have never myself been actually in the Kat River, but all those who have visited it describe it as a fine and fertile country, well wooded and well watered, and capable of maintaining, in ease and comfort, a large population. But its proximity to Kafirland has proved its bane in more ways than one. From the most distant times, the Kafirs and the Hottentots had been at deadly feud. Macomo's mouth, after his expulsion, still watered for the country in which the Hottentots had settled down. The war of 1835 grew, in a great degree, out of this feeling, and the attacks of Macomo and his brother Tyali were mainly directed against the Kat River settlement, which suffered in proportion. The war of 1846 found the Hottentots and the Kafirs the same enemies as before. And then in 1848 came the proclamation of Sir Harry Smith asserting British Sovereignty over that portion of the former Kafirland lying betwen the Kieskamma and the Kye. For three years or so, the Kafirs were quiet, and the land had peace. But in December 1850, a patrol under Colonel Mackinnon was fired upon near the poorts of the Keiskamma, and instantly all the Gaikas, with portions of some other tribes as well, took to the bush, as they call it,—that is, rose in arms. No sooner did the news of this formidable revolt cross the border than the Kat River Settlement showed alarming symptons of disaffection. A ruffian at once wily and energetic, Hermanus Matroos, sometimes called Hermanus Kafir, who had for certain supposed services to Government been located for many years in the Lower Blinkwater, rose at once in rebellion, in concert with the Gaika chiefs; and on the 7th of January, 1851, made a most determined attack upon the town of Fort Beaufort, where he was killed whilst leading on his men with an energy and courage worthy of a better cause. And then was made apparent the astounding fact, that a number of the Kat River Hottentots, forgetting to what power it was that they were indebted for liberty, for land, for favour, and protection, had leagued themselves with the savages of Kafirland, and were fighting, side by side, with their old enemies against the soldiers and subjects of the Queen. The rebellion spread fast. Rebel camps were formed,—rebel commandos were sent out, —and the wildest theories were freely avowed as principles of action. There was to be a Hottentot government established, of which the territories were marked out. The Hottentot nation was to have its own judges,—its own landdrosts,—its own field-cornets, and the like. It was some considerable time before our operations in Kafirland allowed us to send troops into the Kat River. But at length General Somerset, moving up from Fort Hare, after arranging a combined movement with a burgher force from the Winterbergen, in the opposite direction, advanced to Fort Armstrong, which, on the 22nd of February, 1851, he stormed. Gentlemen, the effect of these operations was, to a certain extent, to quell the Kat River rebellion. But it was not extinguished; and it continues still. In the Waterkloof, one of the natural fastnesses of the country, Fordyce and others, gallant men who should have died in nobler battle, have since fallen. Gentlemen, it will thus appear that war and rebellion have been levied

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against the Queen, by certain of her subjects in the Kat River settlement,—and whether the prisoner at the bar is guilty of levying that war and rebellion, or not guilty, is the question which you have to try. The law upon the subject is quite clear. I shall not quote a single line. His lordship will, if necessary, refer to the authorities. There are some cases, so to speak, so black, and some so white, that they admit of no discussion. There are other cases which are neither black nor white, but shading off into the one colour or the other, and these leave room for legal hair-splitting. When Damaree, the London waterman, in the reign of Queen Anne, in his zeal for Church and Queen, raised a mob to pull down all dissenting meeting-houses, it might need a nice construction to hang, draw, and quarter him as a traitor. When, at a later period, Lord George Gordon, of whom you all have heard, was tried for high treason in reference to his alleged connection with the no-popery riots of London, which sprang out of an intolerant feeling towards the Roman Catholic subjects of the Crown,—refined distinctions and long arguments might be called for. But no man doubted that high treason was committed when the Scotch Highlands rose for the Pretender in 1745. And, in like manner, no man doubted that the Irish rebellion in 1798 amounted to high treason. In these cases there was, unquestionably, a treasonable levying of war. Now, gentlemen, it would be just as idle for me to set about proving to you that there has been a treasonable levying of war in the Kat River Settlement in this colony, as it would be to set about proving that the rebellion for which the Scotch lords lost their heads on Tower Hill was high treason, or that the acts of the Irish rebels who suffered in 1798 amounted to that crime. The facts may be controverted, but not the law. Nor do I care to argue whether the law to be applied be the common law of England, or the Roman Dutch law. In an incidental discussion which occurred during the trial, I stated, in answer to a question from the court, that I took the principle to be, that the law of England was to be the rule as to the person and title of the Sovereign; but the local law to be the rule as to the powers, prerogatives, and protections of that Sovereign and her Government. But English laws and Dutch laws alike regard what has happened in the Kat River as treason,—and there is no difference upon this subject between Matthaeus and Voet upon the one side, and Hale and Foster upon the other. For, gentlemen, the foundation upon which the law of treason rests is one so broad and clear, that no difficulty can exist either as to the nature or the enormity of the crime. The foundation of the law is the necessity of putting down and punishing those who resist, by force of arms, the constituted authorities,—and seek, by violence, to subvert the Government. There is sometimes a sympathy felt for what are termed political offenders. In truth, however, the laws which visit them as the worst offenders are just and wholesome laws. The breach of any one law is not so dangerous as the act of casting off all law whatever, and resisting its authority. For once get rid of the cement that holds society together, and who does not see the disastrous results that must ensue? High treason is the greatest crime that a subject can commit, be-

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cause it inevitably tends to bring almost all other crimes along with it,—murder, robbery, rape, with their attendant horrors, —and thus it comes to pass that, by every system of jurisprudence, high treason has been made severely punishable. Gentlemen, I am now brought to the evidence given before you, tending to prove the prisoner, Andries Botha, to have been guilty of this great crime. I shall, in summing up the evidence, take separately the six counts of the indictment which you hold in your hands, and I shall take those counts in their order. The first count charges a levying of war on the 24th of January, 1851, when the seven Fingoes were plundered at Fort Armstrong. Can you doubt that war was levied there that day, by those engaged in this affair? Call to mind the state of things at Fort Armstrong on that day. Uithaalder, the rebel commandant, had paid that visit to it of which you have heard so much, on the 22nd, and his visit had entailed much additional disorganization. On the 23rd, the news had arrived of the shooting of the Hottentots in the Mancazana, by Pringle's party, which had greatly increased the disaffection and exasperation. And then, on the morning of the 24th, arrive seven Fingoes, on Government duty, with Government horses, and Government guns, when out the whole population rushes, like ants out of ant-hill, and the Fingoes are stripped of everything, threatened with instant death, and only save their lives by flight and the humanity of two or three spectators. I am aware of something that may be urged. I am aware that it may be urged that these Fingoes had some days before been supplied with horses pressed by the magistrate from some inhabitants of Kat River, which horses Colonel Sutton had kept at Fort Beaufort in order to rest; and that the movement against the Fingoes arose out of the desire of the owners of the absent horses to get back their property or security for its restoration. Let it be granted that there may be something in this. Let it be granted that Hermanus Lotz and Hans Groepe, who were owners of absent horses, may not have committed high treason by seizing other horses instead. True, even these men knew well that what they were doing was unlawful, that the Government was responsible to them for their horses, that to take the other horses by violence must be a crime. But let it be granted that this crime in them was not high treason. It may, however, have been high treason in others who claimed no horse, who claimed no gun, and who used the circumstances for the purpose of resisting the Queen's authority, and endangering those who supported that authority. Claimants of horses left behind might perhaps have that sort of personal interest and object which, however thin and shadowy, might save them from the penalties of treason; but strangers, who interfered from political motives, and who stimulated the attack by violent and seditious language, seem to me to be in a very different position. You are not trying Lotz and Groepe, but Andries Botha; and if you think that Andries Botha said and did what the Fingoes swear he said and did, that he was art and part, as the Scotch say, in what was then effected, his lordship, I think, will tell you that there is sufficient evidence of a levying of war. The state of Fort Armstrong at the time must be kept constantly in mind. When touch-

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ing on this state just now, I forgot to advert to the occurrences on the night of the 23rd. In the evening of the 23rd, the English who had hitherto gathered into Fort Armstrong for safety, feeling their danger, fled. That night their property was pillaged,—shops and stores broken open,—everything left to the mercy of the plunderers,—and the morning of the 24th, when the Fingoes came, found the rebels in possession, and the place in a state of war. And observe what Botha, who was in authority there, who claimed no horse, who claimed no gun, who had no personal object in the outrage, is sworn to have said, "You Fingoes, I hate the sight of you! I brought you out of Hintza's country, and now you are fighting for the English! but we shall drive you and your small captains, the English, over the sea!" Gentlemen, if Botha used such language, what is it but the language of a man who had in his heart hostility to British authority? Is it the language of a loyal man who only interfered to help some friends to regain their property, or to secure something which would enable them to regain their property? Coupling such language as this with such acts as were done, can you doubt, if you believe the witnesses, that there was by Botha a levying of war? But then comes the other question,—did Botha really say and do what these Fingoes swear he said and did? Botha says "No." "I saw," he says, "what was done,—but I disapproved of what was done,—I took no part in the doing of it,—and I was an unwilling spectator of the wrong." This is his case. Against this case you have the testimony of the Fingoes. They swear that they knew Botha well, that he was present counselling and commanding what was done, that he gave orders for their being shot, and acted generally in the manner which you will perfectly recollect. Is this true or is it false? You have seen the men. I have not myself had much court experience of Fingo witnesses. But unless Fingo nature be different from every other sort of human nature, I must say that I cannot regard these men as telling what they knew to be a series of lies. You saw how they spoke, how fearlessly they eyed the prisoner, never hesitating and never flinching, and you will form your own opinion as to whether they were telling truth or seeking to swear away, falsely, the life of the prisoner at the bar. Evidence so clear, strong, and positive as that given by these men is, I submit, well worthy of your consideration. It is not denied that Botha was at Fort Armstrong that morning. It appears that he had there a sort of authority as assistant to old Groepe, the commandant, whom he and Fourie used to assist by turns, and whose infirm state of health is the only excuse that can be offered for the manner in which he failed to discharge his duty. No witness states that Botha, the assistant-commandant, present at the outrage on the Fingoes, raised a finger, or said a word, to stop it. John Fourie, a man not in authority, interfered,—why did not Botha interfere? It is in proof that he is the fighting man of the Kat River. Why, then, did he not do what John Fourie did? It will be for you to say whether his not interfering on the right side does not support the witnesses who swear that he interfered on the wrong side. I admit that he is not being tried for doing nothing. I admit

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that he is being tried for what he did,—not for what he might, however culpably, have left undone. But his doing nothing countenances the positive evidence against him. But he says that he did nothing and he calls his witnesses. I shall shortly notice them. Now, it is not necessary for me to say one word against the general character and credibility of the witness John Fourie. You heard his examination in chief, and also his cross-examination. It did appear to me that his answers to my learned friend came from him readily and freely, whilst his answers to myself were not quite so ready. But you heard him, and will form your own opinions. This, however, I may say, that every thing sworn by John Fourie may be perfectly true, and yet the story told by the Fingo witnesses be wholly uncontradicted. He describes to you how he went down to James Green's shop at a certain time, and everything stated by the Fingoes may have happened during the interval of his absence. Christian Zeeland says very little. The only time Zeeland saw Botha that morning was when Botha was already standing with the Rev. Mr. Thomson, and Field-Commandant Groepe. Now, at that time everything sworn to by the Fingoes was, in all probability, completed, and Botha, if minded throughout these unfortunate affairs to run with the hare, and at the same time follow with the hounds, might well be found, when the mischief was over, in the company of those with whom Zeeland says, he saw him. There is nothing as yet to negative the positive and consistent testimony of the Fingoes. Cornelis Margerman did not see Botha at all, although he certainly was there, and upon the whole I submit that, if you believe that the Fingoes cannot be mistaken as to the man, and further believe that they are not fabricating a falsehood in order to destroy the prisoner, the witnesses produced by the prisoner do not overthrow their testimony, for every fact proved by those witnesses is reconcilable with the truth of what the Fingoes have sworn. And, gentlemen, bear in mind that field-commandant Groepe swears that it was after the affair was over that he first saw Botha, who came to him to bid him good-bye; and coupling this with Zeeland's evidence that Botha and Groepe were together when he saw the former first, you will, I think, conclude that Zeeland, in fact, did not see what took place. The noise, numbers, confusion, and uproar may well account for different witnesses seeing different things, and for no one witness seeing the whole transaction. These very things would stamp Botha the deeper on the minds of the Fingoes, the objects of attack, but might have the opposite effect on mere unconcerned spectators, and spectators merely of a part of what was done. I conclude my observations on this count by again submitting to you that, if Botha did what the Fingoes swear he did, he that day levied war against the Queen. Hermanus Lotz, if he merely sought illegally to get a pledge for the restoration of his horse,—did not levy war. But Andries Botha, who had no interest and no object except such as were of a general and public nature,—could not do what he did, and say what he said, without incurring the guilt of high treason. How far the evidence satisfies you of his participation in what was done upon that occasion, it will be for you, gentlemen, to

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pronounce. I have no more to offer upon this part of the case. Gentlemen, we come now to the second court. This charges the attack upon the party of three Fingoes on the next day. Here, in the case of the three Fingoes, the law is even clearer than it is in the case of the seven. There was here no shadow of a pretext for what was done. The place was in insurrection. Three Fingoes, members of an irregular force, arrive there on duty. No one claims a horse. No one claims a gun. But they are instantly set upon, and treated pretty much in the same manner as their predecessors had been treated. They were attacked for no personal or private reason,—but solely because they were in the Queen's service, in possession of Government despatches. Some men that day did undoubtedly commit high treason. Gentlemen, I say some men, because it is for you to say whether Botha did do so or not. And it is right to say that I look upon this second Fingo charge as the weakest part of the case against the prisoner,—though still a part of the case deserving your best attention. Gentlemen, as I have already said, war was levied. What was done upon the day in question in the square at Fort Armstrong differed in nothing from what might have been done on the same day in Uithaalder's camp. Loyal men were assailed, plundered, and threatened with death, simply because they were loyal. Then was Botha there? Mango, Boko, and Pempini, swear that he was there. These people are clear, unhesitating, and consistent. This was the first charge against the prisoner that came under my notice. It struck me as being so strongly supported as to make it my duty, in case the Commander-in-Chief should not think proper either to try by court-martial, or to stop proceedings, which he did not, to bring the case before a jury. Mango, Boko, and Pempini swear positively to Botha, whom they show they knew well. And you will not fail to have obse ved, that Piet Bantam incidentally mentions that he saw Botha at Fort Armstrong that morning. Bear also in mind, as a proof that they are now swearing *bona fide*, that Groepe admits that, when complaining to him at the very moment, of the robbery and the violence, they named Botha. They did not pause to concoct a story, but charged the prisoner on the instant; and three days afterwards Mango made to Mr. Calderwood his full statement, inculpating Botha. How is it possible to suppose that men are lying, who, at the moment, and on the spot, name the party whom they charge? And on the 27th of January, when Mango was examined before Mr. Calderwood, there had been time neither to forget the truth nor to forge a falsehood. Did the case rest here, I should say that a clearer or a stronger case could scarcely be proved in a court of justice. But the case does not rest here. Several witnesses have been examined for the defence, whose evidence is very strong. I feel myself perplexed, not seeing my way clearly,—and I at once admit that if a doubt exist, the prisoner is entitled to the benefit of that doubt. Jordaan swears—and I see no reason to charge him with perjury—that he saw all that took place, and did not see Botha whom, had he been there, he must have seen. Jordaan and Boko cannot be reconciled. Then we have Isaac Isaacs, a witness not, perhaps under all circumstances, beyond impeachment; but he has not been shaken, and he is positive

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that Botha was not at Fort Armstrong on the day when the three Fingoes were pillaged. Nor is this all. Five witnesses appear to support a sort of defence, than which none can be more dangerous when it fails or more decisive when it succeeds,—I mean an *alibi*. They come forward to prove that the prisoner could not have done what the three Fingoes swear he did, because when the three Fingoes were at Fort Armstrong, Botha was elsewhere,—that is to say, some six or seven miles off, at Philipton. On this point you have field-cornet Fourie, his son John, Andries Hatta, Christian Zeeland, and, I may almost say, the Rev. James Read, junior, whom Botha accompanied to Philipton late the night before. These witnesses swear that Botha came to Fourie's early in the morning, at daybreak, to take coffee,—that he remained there for a considerable time, talking of what had occurred to the seven Fingoes the morning before,—and that whilst Botha was still there at Fourie's, Zeeland arrived on horseback from Fort Armstrong to report to Fourie that three fresh Fingoes had that morning arrived, and been attacked. Gentlemen, I admit that this *alibi* is strongly supported. But honest witnesses not infrequently mislead themselves and others by torturing their memories, in their anxiety to save a friend, so as to connect together in point of time, two circumstances which are both true but which, in point of time, were disconnected. It is natural to suppose, and is, indeed, in proof, that Botha very often took coffee in early morning at his friend Fourie's. That Zeeland came one morning to Fourie's with the news is no doubt, certain. Then, when it is learned, after a lapse of time, that Botha is charged,—how natural for one friend to say to another "Let me see,—was not Botha here the morning that Zeeland came? I think I remember,—yes, I am quite certain I remember,—that he took coffee with us that morning that Zeeland came." What was there to fix on the memory Botha's presence there that morning? I asked the witnesses what Botha said on hearing Zeeland's news. None of them recollect. They said he wondered,—though after what he had himself seen at Fort Armstrong the morning before, there could be nothing very wonderful in Zeeland's story. It is plain that the witnesses remember nothing of what Botha said or did that morning,—and they may only fancy that he was there at all. But still I must, in candour, repeat that this appears to me to be the weakest point of the case against the prisoner. I am perplexed by the conflict of evidence. The evidence against him is very strong. The evidence for him is very strong. If the effect of these two opposing forces should be to drive your minds in the direction of a merciful doubt, God forbid, gentlemen, that I should say one word against your humane determination. Gentlemen, I now quit what we call the Fingo charges, and come to the third count, which deserves, I think, your close attention. There happens to be but one witness to the fact charged in the third count. The law, gentlemen, as his lordship will tell you, is that there must either be two witnesses to the same overt act of treason, or else one witness to one overt act, and another witness to another overt act of the same species of treason. Jacob Nieuwveldt, therefore, if you believe him, is, by law, competent in this case to prove the third count. Is he credible?

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Gentlemen, my learned friend asked this witness on the cross-examination very few questions. I confess I thought my learned friend discreet. You saw the sort of person he is, —a nervous, stuttering creature of the smallest possible capacity, who felt an obvious difficulty in thinking or in comprehending what was said. Is this, my learned friend will say, a kind of witness to be credited? Gentlemen, I think so. We know what trustworthy witnesses children are, and men in mind like children are witnesses of the same stamp. Their observation and memory are strong in proportion to the feebleness of their reasoning faculties, and Nieuwveldt's very weakness in understanding appears to me to give credibility to his story, for he is wholly incapable of inventing a falsehood or of being drilled to tell a falsehood invented by some one else. Observe, gentlemen, I confine myself to what this man swears he saw with his eyes. His report of a conversation, I cast to the winds, for he has not capacity to collect correctly the subject of a conversation. He has eyes to see, but not a head to reason. Looking, then, at this man, do you or do you not believe that upon some day or other he saw Andries Botha come alone on horseback to the rebel camp, near Lushington, and dine with Uithaalder and Macomo? Farther than this fact I do not seek to go, nor do I ask you to accept as accurate what Nieuwveldt reports they talked about,—an attack on Fort Beaufort, a scarcity of gunpowder, and some other matters of the sort. The witness, I admit, might readily misconstrue a remark. But that Botha dined with Uithaalder, that Macomo was sent for to the Kafir quarter and came to dinner, and that they partook, together with certain of their followers, of the flesh of an ox slaughtered for the occasion, appear to me to be things that this witness must have seen, and cannot have invented. I admit that, from the very nature of the charge, the prisoner cannot be expected to bring evidence to rebut it. But still I submit to you that falsehood is, under the circumstances, scarcely supposable. The evidence strikes my mind as strong,—it will be for you to say whether or not it is convincing. Gentlemen, I am now arrived at the fourth count. It charges the prisoner with having fought at Balfour on the 22nd of February, the day Fort Armstrong was stormed. I called this, in my opening, the cardinal point of the case,—the point upon which the case would chiefly turn. I call it so still. Let me now call your attention to the evidence upon which this, the Balfour charge, appears to rest. You have, first, the evidence of Hermanus Lotz. This man had, before the war, been appointed an assistant field-cornet at Fort Armstrong. He swears that he quitted Fort Armstrong for Philipton on the morning of the 22nd of February when General Somerset was approaching,—that he took the road by Balfour,—that from that road the rebels and the burghers who were fighting could both be seen, and that he saw Botha actually engaged. This is his evidence. You may doubt the man, but you cannot doubt that, if believed, he proves the case. My learned friend cross-examined Lotz as to his reason for going to Philipton by the Balfour road, and Lotz gave his reason. But recollect that Jordaan, the prisoner's witness, told us that he himself went to

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Philipton that morning by the Balfour road,—the same Jordaan who mentions also that, on that morning, he had heard Uithaalder in Fort Armstrong threaten Lotz for refusing to go out and fight against the settlers. From that elevated Balfour road, Lotz looks down, and sees Botha, together with Hendrik Nuka and Kieviet Brander, —the former of whom is still out in the hills as a rebel, and the latter of whom was recently hanged at Graham's Town for the murder of Mr. Castings. And after a time, Lotz swears he saw Botha come to Philipton, the firing still going on, leading a yellow horse with new saddle and bridle. All this Lotz swears he saw with his own eyes on the morning of the 22nd of February,—the day of the Balfour fight. Then he gives this further evidence, that when Botha, he himself, and a number of others were prisoners together at Fort Hare, awaiting trial by the court-martial that sat there in March, 1851, Botha, in the course of those conversations with which the prisoners were wont to beguile the tedium of their confinement,—spoke about Balfour,—spoke of the destruction which would have fallen upon the burghers had Somerset not come up to their relief,—spoke of the yellow horse which he had won in the fight. You have here the evidence of one witness on the fourth count. Then comes the witness, Piet Bantam. Bantam was not in company with Lotz that morning. He was out, as he has explained, in a somewhat different direction,—having taken advantage of some order to turn back the Kafir cattle, in order to look for his horse. Bantam then swears that he saw Botha, armed and on horseback, pass with others near a drift of the Macomo's Hoek River, and so into a hollow from which the rebels kept up their fire upon the burghers who were visible along the height beyond. He did not, he says, see Botha actually fire,—because from where he stood the rebels who were firing were concealed from view. But he swears he saw him there, and accurately describes his dress. This witness further states that he saw Botha again riding his own horse, and leading a yellow horse with a new saddle and bridle. Bantam also was in the prison at Fort Hare, and he corroborates Lotz as to Botha's statements there. The two witnesses differ a little in regard to the precise words; but agree entirely in substance and effect. This is the second witness whose evidence you have in support of the fourth count. Arend April comes next. This witness swears that, being out with his goats the morning of the fight at Balfour, he saw Botha, who came from the Philipton direction, go into the fray,—that he saw him actively engaged in the action,—and that he saw him return towards Philipton leading a yellow horse, saddled and bridled. And Arend April proves also the speeches, in prison, about Balfour and the fate which was awaiting the burghers when General Somerset arrived. This is the third witness whose evidence you have in support of the fourth count. Next comes Hans Groepe, the brother of the commandant, who swears that on the morning of the fight at Balfour he was at Fort Armstrong, and saw nothing. But he was in prison with Botha at Fort Hare, and he swears to Botha's statements there in the most positive manner possible, —to the danger of the burghers,—and to the winning from the farmers of a yellow horse. This is the fourth witness

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whose evidence you have in support of the fourth count. Andries Jansen next comes, and he states the same thing as the rest do, regarding the prison statements at Fort Hare,—the yellow horse, and the rest. This is the fifth distinct witness to the fourth count. Marthinus Groepe, the son of the commandant, was next produced. He gives the same sort of evidence as to what was said in prison. He states, "I know Botha. He was a prisoner with me at Fort Hare. He spoke about a horse. He said he had won one at Balfour in the fight." This is the sixth distinct witness to the fourth count. Then you had Cobus Van Beulen, whose opinion of Botha's loyalty appears, for reasons which he could perhaps, if asked, have given, to be found not unfavourable. What Van Beulen states is this, "I know Botha. I see him here. He and I were in prison together at Fort Hare. He there told of a horse. We asked what was the reason that he, the old man, had come to us in the cell. He said it was on account of a horse, a yellow horse. He said he had taken it the morning of the fight, when the farmers came to Balfour, from a Kafir." I prefer to give you this in the words of the witness, because while the statement involves a distinct admission that Botha was at Balfour, and that he won a yellow horse there, it puts forward what none of the other witnesses mention,—a statement that the horse was won not from a farmer, but from a Kafir. Thus, gentlemen, you have seven distinct witnesses all swearing substantially to the fact that Botha was at Balfour. If you believe this evidence you must, upon your oaths, convict Botha upon the fourth count. True, the whole seven do not say they saw him fight. Three of them, however, saw him fight, and all the seven swear to his admission of having fought,—or of something tantamount. These seven witnesses agree. But when I say that these seven witnesses agree, I do not mean to say that they agree in all the details. Gentlemen, I should be apprehensive, very apprehensive, that I was hearing falsehood, and not truth, if I found seven witnesses all telling precisely the same story in regard to such events as those which these seven witnesses have narrated. It is sometimes said that truth is one. In a certain sense this is true. But it is not true of evidence given by witnesses who, though faithworthy, are yet fallible. On the contrary, there can be no greater proof of truth than the existence of such diversities as show the total absence of all concert,—whilst there is yet complete agreement as to the main facts, which are the things to be substantiated. I have observed, and admired, the undeviating attention which you have paid to this trial. But suppose I were now to send you out of court, and call you in one by one, and examine you severely about the order in which the witnesses were examined, and the facts deposed to by each particular witness, do you think you would all agree? Do you think that any two of you would agree? But, for all that, would you not be credible in unanimously proving that there was a trial, and that you sat as jurors, and that evidence of a certain nature was given in the case? You would agree in substance. You would differ in details. And this, gentlemen, is the great criterion of truth in testimony. But, says my learned friend, these seven witnesses are not to be

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believed, because they are all of them convicts, convicted of high treason, and now under sentence of imprisonment for life. Gentlemen, Mr. William Smith O'Brien, a gentleman of ancient lineage, and once of high position, is a convict for high treason, under sentence of imprisonment for life. Would you say that because Mr. William Smith O'Brien was a convict for life for high treason he was not to believed upon his oath? Do I say that these seven witnesses are of the rank of Mr. O'Brien? Not so. But they are men of the same rank as the prisoner. You have seen them. They came before you in their convict dress. They were not well-dressed witnesses. They wore no silk stocks, no white handkerchiefs, but for all that they are of equal rank with the witnesses for the prisoner, who appeared in silk stocks and white handkerchiefs, and they sign their deposition in their own handwriting whilst the prisoner, I know, is unable to write his name. But it is said that the apprehension of being punished for perjury is one of the sanctions of evidence, and that men who are already under sentence for life can fear no further punishment. I know that the apprehension of punishment for perjury is one of the sanctions of evidence. But I know that it is one of the very weakest of all the sanctions of evidence. The strongest is the fear of God, and there are other inferior sanctions more efficacious than the fear of human punishments. It is harder to tell lies than to tell truth,—for lies require labour to invent, and truth requires only memory to suggest. Then, again, there is the social sanction, the feeling that truth is universally regarded as becoming and falsehood as disgraceful, —and the reluctance to be detected and put to shame. It is upon these, and similar sanctions, that juries can depend, rather than upon punishment for perjury. But how do these men know that they may not be punished for perjury? May they not fear yet harder work? May they not fear far sparer diet? How do they know that they may not be flogged? Is it clear that they may not expect to be hanged? and this precisely because they cannot be imprisoned? Gentlemen, it is idle to say that these men are necessarily free from the fear of penal consequences if proved to have committed perjury. But it will be said that, as convicts, they must know that the Government may set them free, and so some agents of the Government may tamper with the expectations of these men, and incite them to destroy the prisoner. This would be a fearful supposition,—and one, I think, not to be entertained except upon some grounds. Am I not right in saying that if the Government meant to destroy this man, guilty or innocent, he would not now be on his trial here? He might have been disposed of by a drum-head court-martial. He might have been sent before a frontier jury. And to say the Government, which has given him such a trial as he has had, would yet suborn wretches to swear away his life, would be absurd even if it were not criminal, and would be criminal even if it were not absurd. How were the four first witnesses got at Bain's Kloof? Here are the letters, but I shall not read any of them, even as statement, if my learned friend objects. (Mr. Watermeyer intimated that there was no objection to the Attorney-General reading these letters.) Then,

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gentlemen, I shall read a letter of mine to the Secretary to Government :—

"Attorney-General's Office, Cape Town,
"April 5, 1852.

"Sir,—Desiring to obtain all possible information connected "with the case of Botha, I take the liberty to suggest the "propriety of causing inquiries to be made amongst the Kat "River Hottentots at Bain's Kloof, regarding the part taken "by Botha previous to and about the time of the storming of "Fort Armstrong.

"The inquiries should be made in such a manner, as to "prevent the likelihood of any mutual agreement, upon the "part of the men, to be silent or to tell a preconcerted "story.

"No hope of reward or commutation of punishment should "be held out.

"Facts against the accused are not, I need scarcely say, "to be considered of greater importance than facts in his "favour, the object simply being to insure, as far as we can, "a just verdict.

"Of course, it is not contemplated that any inquiries "should be made of the sons of the accused.

"I have, &c., (Signed.) W. PORTER."
"The Hon. the Secretary to Government, &c., &c., &c."

This letter was referred by the Secretary to Government to the visiting magistrate, Mr. Bain, on the 8th of April, and on the 16th Mr. Bain replies in the letter which I hold in my hand, stating that four men, Hermanus Lotz, Hans Groepe, Piet Bantam, and Arend April, were cognizant of Botha's proceedings about the time in question. They were sent up for, and down they came. What was the next step? They were examined before Mr. Borcherds, by myself, in the presence of Mr. Fairbridge, the prisoner's attorney, and of my learned friend (Mr. Watermeyer), the prisoner's counsel, whom I invited to attend. And there these men, separately examined, told the story which they told to you. The younger Mr. Bain has been produced to prove how it was ascertained that these men knew what they have disclosed. Mr. Bain first spoke to Lotz, who stated, in substance, what he has since deposed to. Then another convict, a man named Smit, was asked; but he knew nothing. April Arend was the third, and he, knowing nothing of what Lotz had said, disclosed what he professed to have seen. There was no opportunity given for concert or agreement, and yet the witnesses concur. It was thus with the first four witnesses. The three others came down since the trial began. As there is no objection to my reading from these letters, I will read the letter desiring the attendance of these men:—

"Attorney-General's Office, Cape Town, 8th May, 1852.

"Sir,—This letter will be handed to you by a constable, "who is to be dispatched with a wagon on Monday morning, "in order to bring down to Cape Town the following persons "now under sentence at your station, viz.,—Marthinus "Groepe, Andries Jansen, Cobus van Beulen. From some-"thing that has reached me this evening, I am led to think

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"that each of these men is able to throw light upon some "portion of Botha's case. And even if, either from ignorance "of his proceedings, or unwillingness to disclose what they "know, these men should prove of no service to the ends of "justice, I shall take the responsibility of having caused them "to be brought down to Cape Town for the purpose of "being examined.

"I do not propose that they should be examined by you or "any of your officers before being forwarded. But if, from "hearsay, or a sudden appeal to any of those parties sepa-"rately, I could be furnished with a clue to what they really "and truly do know, I should be materially assisted.

"If it should appear that there are other men who, from "anything that has reached you since the four witnesses al-"ready here left Bain's Kloof, may be supposed to possess "information, either against Botha or in his favour, pray send "them down at once.

"I need scarcely say that any idea of undue influence be-"ing exercised by you, or your officers, to obtain evidence is "one which I regard as idle. But this case seems to be con-"tested with more than common zeal, and imputations might "be cast which I should be glad to be able to negative effect-"ually. If, therefore, you could, without danger to your sta-"tion, send down that one of your officers who can speak to "the way in which Lotz came to state that he knew some-"thing regarding Botha's proceedings, I should deem his "presence here important. If the same officer can speak in "regard to any of the other four, so much the better.

"The hour at which I write is too late to allow of my obtain-"ing the sanction of His Honour the Lieutenant-Governor "for sending off the constable and wagon. But I feel as-"sured of his Honour's concurrence, and, as time is pre-"cious, I take upon me to act without his previous sanction.

"I have the honour to be, your obedient servant,

"W. PORTER."

"A. G. Bain, Esq., or Mr. Short."

In consequence of this letter, the three men mentioned in it came down. They had with them, as they swore, a constable who spoke Dutch,—they were never together except in the constable's presence,—and they all testify that when coming down they did not know for what purpose they were brought. Until I had separately questioned them in the Cape Town prison, they were allowed to have no communication with each other. Now, gentlemen, admitting that convicts must be under a strong temptation to say what they might hope would serve them, I ask you to say whether the way in which all these seven men corroborate each other under circumstances which forbid the possibility of conspiracy or concert is not a powerful confirmation of the story which they tell? I ask you to say whether there must not be truth at the bottom, seeing that it would be utterly impossible for independent fabricators to fabricate the same lie? But my hon. friend says, that what these men say cannot be true, because had it been true, they would have disclosed it at Fort Hare. Gentlemen, my learned friend made himself a remark, in the course of the trial, which answers this objection. He spoke of that peculiar apathy, as I may call it, of the Hottentot character, owing to

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which the Hottentot never speaks about such matters till some man in authority speaks to him, but then he becomes sufficiently communicative. Bear in mind that none of these men volunteered a single word. They never uttered a syllable, till my first letter was referred to Bain's Kloof, and questions were asked of such men as were likely to be able to answer them. Had these men who were silent at Fort Hare volunteered their statements at Bain's Kloof, I should be bound to admit the force of the contrast. But they were silent at Fort Hare, they were silent at Bain's Kloof, and, but for being spoken to, at my instance, they would have been silent still. Extraordinary as it may appear to some, (to me it is not extraordinary), they preserve silence down to the time when they were first invited, if they knew anything, to state what they knew.

CHIEF JUSTICE.—How long have these men been at Bain's Kloof?

ATTORNEY GENERAL.—About nine months, my lord. They are long silent. When they break silence it is because they are interrogated. They are interrogated separately, and they tell the same story, or nearly so. What, then, is there about these men which should brand them as conspirators? as conspirators who keep silence? as conspirators most of whom could have had no opportunity of conspiring? Gentlemen, there are tests of truth wholly independent of personal veracity in the witness; and even if these men had an abstract fondness for falsehood, it will be for you to say whether their agreement in substantials does not, under the circumstances, afford a test of truth which is wholly independent of their personal veracity,—a test which it would shock common sense to affect to leave out of the question. I therefore leave it to you to say whether the levying of war charged in the fourth count is not made out. But this is not the entire of the evidence. You have the testimony of a witness who is not a convict. Before inquiries were made at Bain's Kloof, inquiries were made upon the frontier, and a witness who knew nothing about the people at Bain's Kloof gave evidence of which the Bain's Kloof people knew nothing, but evidence strongly corroborative of their statements and almost of itself conclusive. I allude to Mr. John Green. This witness swears that on the morning of the fight at Balfour, after the firing had begun, he saw Botha, mounted and armed, ride out from Philipton in the direction of Balfour. The convicts see Botha at the place to which Green sees him going. Does Green swear this to bolster up the Bain's Kloof men? No, he was wholly ignorant of their existence. Did the Bain's Kloof men know what Green had sworn? Assuredly not. And here you have Green, no convict, no traitor,—a tailor, and a loyal man,—here you have Green bringing Botha to the spot where the Bain's Kloof men saw him fight——

CHIEF JUSTICE.—With five or six people?

ATTORNEY-GENERAL.—My lord, I shall read from the notes taken for me what John Green says upon the subject. He says, "I remember the fight at Balfour. I saw Botha leaving Philipton armed. Five or six people were with him. The firing had then commenced. The distance is about half-an-

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hour." This is the evidence of John Green, and it is for you to say whether it is not evidence of a most pregnant nature, whether, coupled with the circumstances of the place and time, it would not itself convince you that Botha fought at Balfour, —whether, taken together with the evidence of the seven witnesses already observed upon, it can leave the least shadow or degree of a doubt upon your minds. Such is the case for the prosecution upon the fourth count. Need I say that it is a strong case? Need I say that it should be strongly met? Need I say that it would require an extraordinary force of proof from the other side to throw back the tide of testimony which rushes down upon the prisoner in reference to this Balfour charge? I waited for this part of the prisoner's defence with some degree of interest. As a professional man, I felt the difficulty in which my learned friends were placed. That yellow horse, what would they do with him? Would they wholly deny him, or would they admit and account for him? It was indeed a great difficulty, and I watched with professional interest how it was to be surmounted. They decided that they should produce a witness to admit the horse, but to account for him. I am sure they decided wisely for their client. But so it now is that you have before you Botha's own account of himself during the Balfour morning. Where was he? Has any man, or any woman, or any child in Philipton, come forward to say that when the firing was going on at Balfour, Botha remained peaceably at Philipton? Not one. But Jan Brander, whose history you remember, comes forward and tells you that he was out that morning looking for horses, and that when between Philipton and Balfour he saw Botha coming towards him from Balfour side, leading a yellow horse with a new saddle and bridle; and even if you believe Brander, when he swears that Botha told him he had got this horse, with new saddle and bridle, running amongst Kafir cattle, you will say whether you believe that Botha told the truth? What more does Brander say? "I saw Kafir cattle and Kafirs driving them." I believe Botha to be a brave man, but do you believe that these Kafirs would have allowed Botha to take from them a horse with, what Kafirs very rarely catch, a new saddle and bridle? The horse and his saddle and bridle are very unlike any which Kafirs would be driving with their cattle, but very like such as a burgher might be shot down from, and which might then be caught, perhaps by the very man whose gun had shot the rider. Ask yourselves what brought Botha there at all that morning? How was he up amongst the fighting men on either side? Did he go out single-handed almost to fight against the rebels? Why should he go out against them on this particular morning, seeing that he had never gone out against them before? Botha could not join the burghers except by going through the rebels, who lay between Philipton and the heights on which the burgher force was placed; and Botha, beside, never meant to join the burghers at all. Take, then, the evidence of the seven men from Bain's Kloof, the evidence of John Green, and the evidence of Botha's own witness, Jan Brander, and say whether you can have a doubt upon your minds that Botha was in the fight at Balfour, that he won a horse there from the farmers, and that he brought that horse with him to

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Philipton. And then comes the question,—what became of that horse? Did he take wings to himself and fly away? Did the earth open and swallow him up? Why was he not preserved as a trophy? Was he casually lost at Philipton! Gentlemen, the only evidence we have accounting for that horse, is the evidence of Hermanus Lotz, who swears that upon the afternoon of the 22nd, after the fight at Balfour, he saw the prisoner, with his son Stoffel, who had been wounded in the attack on Fort Beaufort, and who is now with rebels, quit Philipton, having with them the yellow horse, and go in the direction of Van Beulen's Hoek. This is all we hear about this horse which Botha's own witness proves in his possession. Where he was stabled, no one tells us,—and none of Botha's witnesses, save Brander, ever heard of him. Two facts, however, are clearly proved,—one that this yellow horse was never seen at Philipton after that day,—and the other that Stoffel Botha that day likewise vanished. Does not this corroborate Lotz? And without labouring farther this portion of the case, I put it to you to say whether, in your experience, you remember to have seen anything better established by direct evidence against the prisoner, and by circumstances that cannot lie, that Botha was in the fight at Balfour and won a horse there which he does not account for. I now come, gentlemen, to the fifth count of the indictment. In discussing the evidence upon the fourth, I asked what became of the yellow horse? I am now in a position to give a complete answer to that question. You will recollect the evidence of Hans Fister. This man admits himself to be a rebel, and expects to be tried as one. He fought under Uithaalder against the burghers at Balfour,—but swears that he did not see Botha there that day. Owing to the quarter from which he came, he would not observe such men as might, in that wide field, have come from Philipton. The rebels being worsted, broke up into two retreating parties, one of which fell back towards Lushington and the other towards Van Beulen's Hoek. Hans Fister was with the Lushington party, which, however, joined the other party at Van Beulen's Hoek on Sunday, the 23rd of February. Then Fister states, "We joined about 3 o'clock. This was on the Sunday. I know Stoffel Botha, the prisoner's son. He was wounded in the foot at Fort Beaufort. I saw him at Van Beulen's Hoek with the prisoner. The prisoner gave his son a yellow horse. The horse had saddle and bridle on. When I first saw the horse it was knee-haltered and the saddle off. Stoffel rode the yellow horse, proceeding with us that night. Botha told Frans Vally to saddle up the horse. Prisoner went away on foot. I saw him there about an hour." Now, gentlemen, Hans Fister gave this evidence upon the frontier several months ago. This was the first that was ever heard about a yellow horse. Bain's Kloof was then unthought of, and Fister, in fact, when he made this statement, could know nothing about Botha's trial, or whether he was to be tried or not. Is it not surprising how facts dovetail, and truth comes forth from many sources? The yellow horse won on Saturday and seen by Lotz going with the prisoner and his son towards Van Beulen's Hoek, is proved by Fister to have been given by the prisoner to his son at Van Beulen's Hoek upon

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the Sunday. What will my learned friend object to this evidence? Will he deny the fact? Or will he admit the fact, but say that the law, even of high treason, is merciful, and that it would be cruel to convict a father for aiding, with a horse, the escape of a wounded son? God forbid, gentlemen, that we should have no feeling for man's infirmities, or bear too hard upon a loyal father misled by affection for a rebel son. But what is this affection as far as the prisoner is concerned? It is in evidence that, a very short time previous to the rebellion, Botha apprehended and delivered up to justice, another son, a cattle-stealer. Can you assign no reason why Botha is so stern to the son the cattle-stealer, and so anxious for the son the rebel? It is not fair to conclude that a sympathy with the cause lay at the bottom of the act? If he merely wanted to aid his son to fly, why did he go to the rebel camp, instead of sending the horse and son away from Philipton? Must he not have known that if he were the loyal man he should have been, the rebels would be sure to shoot him dead? But the rebels knew him, and he knew them, and therefore he went amongst them, and supplied them, as far as he was able, with the means of protracting the disastrous warfare which they have ever since been prosecuting. Gentlemen, the sixth count charges a distinct act of levying war, and the evidence regarding it is of another nature. When General Somerset, after the storming of Fort Armstrong, went to Philipton, he remained there two days, and then left for Lushington. From Lushington, a Fingo patrol was sent against the rebels, who were known to be assembled on the neighbouring hills. The firing and the confusion were witnessed from the General's camp, but no one there was near enough to distinguish any of the parties engaged. But at Fort Hare, where Botha spoke of Balfour, he spoke of Lushington as well, spoke of how smartly they had had the Fingoes under the ball that day, and described the manner in which they had been driven back. Lotz, Hans Groepe, and Piet Bantam swear to this. The other Bain's Kloof witnesses do not remember his speaking about the Lushington affair, but the conversations would appear to have been many, and, in all probability, not all with the same men. Is the thing improbable? Botha, you know, was then out upon the hills, having quitted Philipton under circumstances which I shall presently observe upon. Do you think that Botha, who could not but quit Philipton to go to the firing at Balfour, would keep away from the firing at Lushington, the whole of these places lying so close together, that you might cover them with a blanket? The patrol were Fingoes, and this was after that visit to Fort Beaufort, of which the prisoner makes so much, and which did undoubtedly embitter Botha fearfully against the Fingoes,—not to speak of that animosity between the Hottentots and the Fingoes described to you by Sir Andries Stockenstrom. Botha had then before him the men who had, as he alleged, threatened his life at Fort Beaufort,—he had before him the men, the fear of whom had, as he alleged, driven him from Philipton, and exposed him to be treated summarily as a rebel, and, as he was in the hills that day, ask yourselves if what Lotz, and Groepe, and Bantam swear is not likely to be true.

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But Arend April, one of the conspirators, one of the original four from Bain's Kloof, says nothing about Lushington. Jansen, Marthinus Groepe, and Van Beulen, these three also say nothing about Lushington. The men who remember about Balfour remember nothing about Lushington. Reflect upon this fact, and say whether, under the circumstances, this is one of the discrepancies which overthrow evidence, or one of those whichset it up. Gentlemen, I have now, though most imperfectly, run through the direct evidence which applies to each of the six counts of this indictment. It forms, in my opinion, a vast mass. It has come from witnesses, some of whom would not have the power to fabricate even if they had the wish to fabricate, and some of whom could not have the wish to fabricate even if they had the power. If this evidence stood separate and alone, it would form a case against the prisoner of a very dark and dangerous complexion. But, gentlemen, it does not stand separate and alone. It is now my duty to call your attention to some circumstances which it will be impossible for you to disregard when considering the verdict which you shall deliver. Now, God forbid that presumptions should be heaped up against a man on account of that which might, possibly, be creditable to him. God forbid that, if Botha alone were faithful found amongst the faithless, that the disloyalty of others should raise a presumption against him. But it must impress you as a strange thing that a man of his long standing,—a field-cornet of great influence, of high military reputation,—should, if loyal, have had so little weight with a sequacious people like the Hottentots and the Gonahs,—people fond of following their leader, and indisposed to individual action; that his entire field-cornetcy, even to his own sons, fall off, like a loosened cliff, into the rebellion. And, for a shrewd field-cornet, how little he would seem to have known of the feelings of his people. He does not report them as disloyal. True; they do not come into Fort Armstrong as ordered. But Botha excuses them, as they were busy with their crops; but would come in by-and-by. It was not till the matter had gone too far for further concealment that he tells Mr. Wienand that all his people have left him,—that he is obliged to come in alone,—that his son Klaas has even stolen his gun, so that he must come in unarmed. This is a strange story. It may have been quite true. But a man so placed as Botha was should have been extremely circumspect in his future proceedings. It is plain that he was suspected. Peremptory orders are issued to him by the magistrate to come in from the Blinkwater. Groepe declines to make him assistant-commandant. Let us proceed to trace his course, and see what indications of feeling it presents. What Botha could want at Buxton on the 22nd January I cannot imagine, for there was no loyal man there or in that neighbourhood. But on the morning of that day Botha rides out accompanied by old Piet Bantam and young Piet Bantam. Old Piet had been a rebel who came in under one of the proclamations offering pardon, and he was going to the rebel camp, with his nephew, to get his oxen which he had left there. The three riders meet the rebels coming in force to Fort Armstrong, go up to them, shake hands with Uithaalder, and then Botha and Uithaalder

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step aside and hold a conference of some considerable duration. What they talked about is known only to themselves. But then Botha and the two Bantams hurry back to Fort Armstrong to announce that Uithaalder is on his march; and you have strong evidence that when the rebels did arrive, Botha not merely prevented men from firing upon them who were anxious to fire, but made use of highly seditious and mischievous expressions. You remember what is sworn to by Lotz, and by so many others that Botha, when forbidding them to shoot, exclaimed, "Are you prepared to spill your blood for English blood!" John Green proves the uttering by Botha of many similar expressions; when speaking of the Fort Beaufort people:—he would show them what he could do, he would show them that they had another sort of man than Hermanus to deal with. The wonder is not that a man who talked as Botha talked should act as Botha is sworn to have acted,—the wonder would rather be that after talking so, he rested there content. Let us follow him now to rebel camps and observe his conduct there. What swears Arend April upon this subject? Why, that on one occasion when Botha had accompanied the Messrs. Read, Van Rooyen, Fourie, and other loyal men, to try and reclaim the misguided rebels, Botha, after the public meeting was over, spoke apart with Uithaalder and some other heads of the rebellion, and advised an attack upon Fort Beaufort, and spoke of giving men to assist. Is this strange? Recollect that Arend April and Andries Jansen know nothing of each other, nor can have had any manner of communication with each other; and then see how they indirectly corroborate each other. Jansen swears that after the Messrs. Read had addressed the camp, he did see Botha and Uithaalder speak together, though he was too far distant to hear what they were saying. Then, again, call to mind another part of Jansen's evidence, which relates to another time when Botha came to the rebel camp alone, and the people were called together, and Botha and Uithaalder spoke in their presence. I asked, you may remember, whether the people were assembled when Botha came alone. I did so, because if they were, I had no doubt but that the object was to hear Botha speak in favour of loyalty and peace. The answer to my next question did, I confess, surprise me. Botha did speak, but to what purpose? To assure the rebels that, as his children were amongst them, so he also was in the work, that they were all working together, and that he was in the work with them. What more evidence is there? Gentlemen, there is this more evidence, namely what Botha did when General Somerset came to Philipton,—when all loyal men rejoiced in the relief,—when disloyal men were struck with terror at his coming. No sooner does the General approach Philipton than Botha takes to the hills, to live there, in the open air, as best he might. Gentlemen, this is, indeed, a most suspicious circumstance. If there were no other evidence against this man, if we were wholly in the dark as to his previous proceedings, if we merely knew that all loyal men knew that, by proclamations and warnings, they were forbidden to quit their appointed places of abode on pain of being treated as rebels, what would we

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conclude on finding that, just at the very moment when every loyal man would wait to meet the General, Botha betakes him to the bush? It is proved by Botha's witnesses that General Somerset's announcement that all people found elsewhere than at the appointed places—of which places Philipton was one—would be dealt with as enemies, was well known to Botha. Then, in the face of this fact, and at a time when loyal men would stand and rebels fly,—this man flies. It is for you to draw your inferences. What excuse does he give? He flies for fear of the Fingoes: he, the bravest man in the Kat River, does what the greatest coward in the Kat River does not do. But then, old Commandant Fourie says that Botha sent a message to the General that if he came with troops and Cape Corps he would remain, but that if he came with burghers and Fingoes he would fly. But why did not Botha, who wanted to meet the General, but feared the burghers and the Fingoes, ask for an escort to conduct him to the General's presence? Observe the statement of old Fourie. The General, he says, asked him at Fort Armstrong, "Where is Botha?" Botha was a man of mark, who should have hastened forward to meet the General. Then Fourie tells the General what Botha told him, and the General is displeased. Back comes Fourie to Philipton, and tells Botha that the General had asked for him, and seemed to be in great displeasure. What, under such circumstances, would a loyal man have done? Hearing that the commander of the forces was displeased, and knowing there was no cause for his displeasure, he would have seen him without delay. But if Botha knew that he was not loyal, if he were conscious of many things that might affect his life, and if he suspected that the General who was displeased might have found out some matters dangerous to his safety, then, indeed, he would decline to meet the General. When a man who, if innocent, has every earthly motive to remain, and who, if guilty, has every earthly motive to fly, flies, and does not remain, it is for the jury which tries him to take his conduct into account. I have not a harsh word to say of old Fourie. He acquitted himself, I thought, better in the witness box than any other of the prisoner's witnesses, with one exception, and, though friendly to Botha, seemed to wish to speak the truth. Had this old man said anything to make it my duty to observe upon his credit, I should, of course, perform that duty, however much I might regret that Fourie had forfeited the high character given him by General Somerset in his General Order of the 7th of February. But I have found nothing to require me to impeach Fourie's credit. He, Hatta, Jan Fourie, and the Rev. James Read, jun., all swear that Botha, long previously to General Somerset's arrival at Philipton, on the 25th February, stated what he would do. All joined in deprecating such a step,—in warning him of its danger,—in entreating him to beware. And well they might. The act was one which no innocent man, except a madman, could have premeditated,—and not even a madman would have premeditated it, who did not dream that he had been a rebel. A sane man must have gone to the hills at that moment for one or other of two reasons,—either because he was conscious of past treasons and feared discovery, or because, having

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been a traitor already, he was resolved to continue in his course. Gentlemen, this act of taking to the bush is not in itself an act of treason, and, at all events, it is not an act charged,—but it will be for you to say whether anything except an evil conscience could have led Botha to fly to the hills, and that in the face of a published warning, well known to him, according to which he knew that he might, if caught, be tried by a drum-head court-martial as an enemy, and shot upon the spot by a company called out for the purpose. Men like Botha do not, without strong motives, run such tremendous risks as this——

Chief Justice.—There is no time assigned in the amnesty for going to particular locations. There is no time fixed.

Attorney-General.—There is no time fixed, my lord. But, my learned friend will argue, you cannot believe that Botha fled from a sense of guilt, because after some days he came into Eland's Post, and delivered himself up. Let us look a little closely into this part of the case. Do you believe that Botha was in Philipton till the morning of the day on which the General arrived? Probably you do. That Lotz did not see him after the previous Saturday, nor Green either, may be accounted for by the peculiar circumstances of those witnesses, whilst there is strong evidence to show that he was seen in Philipton on Sunday, on Monday, and early on Tuesday morning. Having then gone into the hills on Tuesday morning, why did he, within a week, come in to Eland's Post? Gentlemen, there might be many reasons. He might have found that the cause of the rebels was quite hopeless. He might have been assured by friends that there was nothing against him except his absence, and that he might come in without fear. His interview in the fields with Andries Hatta, not far from Eland's Post, was influential. It is plain that Botha, when he came up to Hatta, had no intention of then coming in. Hatta, his friend, admits that he advised him strongly, and represented to him that he had nothing to do but to come in and show himself, and that all would be cleared up. Under these circumstances, and perceiving that nothing was known against him except his flight, he might well believe that it was better for him to come in and be pardoned, than to remain out and take the chances of the war. He attempts to account for his conduct during the time he was in the mountains by the suspicious witness Jan Matroos. They were constantly together all the time. They saw a Fingo patrol, but they saw, strange to say, not a single rebel. I cannot credit this. What Botha's wife told Mr. James Read is not evidence. But Botha, when out, must have been with the rebels who filled those hills. Listen to his own declaration made before the magistrate at Graham's Town, after Hans Fister and Jacob Nieuweveld had given their evidence in his presence, and he had cross-examined them,—"With regard to the accusation of having been seen holding intercourse with the rebels at Van Beulen's Hoek, I was driven there from necessity, because I was shut out from Philipton by the Fingoes who surrounded it, on the occasion when General Somerset was there. There the son of Vigiland Fister saw me. The accusation of having been at the

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rebel camp at Lushington in company with Macomo and Uithaalder, I know nothing about. The Hottentot has probably mistaken my son Andries for me."

CHIEF JUSTICE.—You did not bring this declaration as evidence under the 5th count, when observing upon that part of the case.

ATTORNEY GENERAL.—No, my lord. The reason was that there is some discrepancy as to the dates. Hans Fister fixes firmly on Sunday, the 23rd,—two days before General Somerset came to Philipton. The prisoner, by speaking of the Fingoes, seems to point to some time when General Somerset was already at Philipton. But there stands his admission of having been with the rebels. He says this was through necessity. But Mr. Cyrus proves that, after he had cross-examined Fister in Graham's Town, he then said that he was at Van Beulen's Hoek in search of strayed cattle. Then, gentlemen, what, upon the whole, is before you in this case? You have the first count supported by three Fingo witnesses, clear, positive, express, and certainly not in necessary conflict with the prisoner's witnesses. You have the second count supported by three other witnesses, but encountered by such contradictory evidence as to leave room, perhaps, for a reasonable doubt. You have the third count resting, it is true, on but one witness, and the fourth count proved by an extraordinary number. The fifth count is proved by the evidence on the fourth, by Fister, and by the prisoner's own statement deliberately made after a previous caution. Then there is the sixth count proved by the fact of a skirmish having taken place, and by the prisoner's admission that he had been engaged in it. And, in addition to all this, you have the mass of indirect but powerful evidence of a corroborative nature, to which I have already directed your attention. You must take this evidence together. It is to mislead a jury to tell them to take every point of the proof as if it stood alone, and if by criticisms of one kind or other, each separate point may be supposed to be weakened, then to tell them to discard the whole. This is not the sound principle. When a multitude of proofs, all pointing the same way, are brought forward against the same man, the very number of them, when they are distinct and unconnected, is evidence of itself. That so many proofs should, by some strange misfortune, be brought against an innocent man as have been brought, from so many quarters, against the prisoner, is scarcely supposable, for surely God's good providence does not permit innocent men to be destroyed by proofs over proofs, twining themselves like folds over folds of some deadly serpent. God does not permit that proofs so numerous that it would be miraculous to suppose them to be all deceptive, should all be found directed against a man not guilty. But the prisoner has called evidence to character. It is of the very strongest kind. I admit that, under Col. Sutton, in the war of 1846, he served loyally and well, so loyally and well that I would rather now be speaking for him than against him, had I not a duty to discharge which, however painful, must be done. I admit that, amongst many who behaved well, Botha seems to have behaved the best. I admit, if it will in your opinion make in favour of the prisoner that when Botha, and the

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others who formed Mr. Wienand's escort, reached Fort Beaufort in the latter end of January, Colonel Sutton considered that the place was very much excited, and the Fingoes more especially. And the prisoner has received a high character from Sir Andries Stockenstrom. Sir Andries Stockenstrom founded the Kat River. He is, as it were, the father of it. He tells you that such was the character that he received of Botha from Mr. Hart, that he placed him upon one of the best locations in the settlement. In the war of 1835, Sir Andries Stockenstrom did not serve. But in 1846, he had Botha constantly under his eye; had the greatest confidence in his loyalty, and considered him one of the last men living likely to become a traitor. After 1846 Sir Andries ceased to have much intercourse with the inhabitants of the Kat River. And it is unhappily too clear that, after that time, the prisoner's mind became embittered. Some circumstances which this is not the place to discuss were considered by the prisoner as intolerable grievances. Some people were expelled from the Blinkwater in an improper manner; but for doing this, the magistrate of that day, a man who shows that honesty of purpose will not, in such a functionary, supply the place of knowledge and discretion, was required by the Government to retire. Then complaints were made of some commonage from which the late superintendent, Mr. Cobb, used, it was said, to impound cattle. These things seem to have sunk deep into the prisoner's mind. He repaired to Maastrom to see Sir Andries Stockenstrom, and in a letter of the 11th of July, 1850, to the Secretary to Government, Sir Andries gives an account of the interview, which account he stated in court is, he believes, almost literally correct. This is the commencement of Botha's address: "I know that your answer will be, that we are mad in coming to you with our grievances; but unless you die or fly the country you shall have to hear the groans of every oppressed class in South Africa; and such is the state of excitement in the Kat River at present, that without some assistance or advice, I do not know how to prevent serious consequences." Then he proceeds to describe the mismanaged expulsion, and ends with this inquiry, "Is it possible that British subjects have to submit to such treatment?" Then he speaks of Mr. Cobb's proceedings, and asks, "Can human forbearance long submit to such galling oppression?" The impression left by Botha upon Sir Andries Stockenstrom's mind is clearly shown by this passage of his letter. "The Kat River people, so lately and so justly considered one of the most loyal communities in the colony, after having been twice mainly instrumental in saving the colony, and being rewarded with malicious calumny and denial of justice, have, from later events, taken it into their heads that a plot exists somewhere to goad them on to some excess, and furnish the plea for their expulsion from the only nook of the land of their fathers which remains to them, and in which they hoped to rest the last ashes of their expiring race. Of the present feelings of these men, Botha is a specimen." Gentlemen, am I wrong in saying that these passages explain not a little of this unhappy case? Am I wrong in saying that when you find Botha talking in this strain to such a man as Sir Andries

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Stockenstrom in July, 1850, there is nothing extraordinary in Botha's whole field-cornetcy and family falling away into rebellion in the December of that year? Am I wrong in saying that his heart was probably with the rebels from the first, and that, although he had too much experience, resolute and determined as he is, to go over openly and take the command from Uithaalder, yet that the acts proved against him out of the mouths of so many witnesses are just the acts which such a man might do? But I shall occupy your time no longer. I would only implore you to hear in mind the single question which you are to try. You are to try whether Andries Botha is guilty or not guilty of the charges laid in the indictment, and you are to try nothing else. You are not to try the alleged oppressions of the Hottentot race, but Andries Botha. You are not to try the Kat River missionaries, and what they did or what they left undone, but Andries Botha. You are not to try the settlers on the frontier, or what ground they may have given for the hatred of the Hottentots, but Andries Botha. And in trying Andries Botha, dismiss, I pray you, from your minds and memories anything that this newspaper may have written against him, or that newspaper written in his favour, and, as in God's presence, do your duty. In closing what I had to say, I would entertain the hope that I have not omitted any topic properly connected with the case, or said anything which has gone beyond the fair discussion of the evidence. Listen now to my learned friend who will speak to you for the prisoner. Attend afterwards to the charge which will be delivered to you from the bench. Then retire and decide this case as you are sworn to decide it,—not according to prepossession,—not according to prejudice,—not according to the views of this party,—not according to the views of that party,—but according to the evidence brought before you in this court. Gentlemen, with these remarks, I leave the case in your hands.

Mr. Watermeyer said,—May it please your Lordship,—Gentlemen of the Jury,—In rising to address you in this, the first case of high treason that has been tried in the colony since the establishment of the Supreme Court, I deeply feel the responsibility of the task I have to perform; and I regret that my duty to the prisoner will require me to trespass at considerable length on your patience, even after the long time which has already been expended on this protracted trial. But although it is beyond my power to call to my aid that eloquence which my learned friend, the Attorney-General, possesses, and which I can but from a distance admire, I feel certain that I may claim, and shall obtain from you, the same earnest attention on behalf of the prisoner which he has experienced for the prosecution. At this time, gentlemen, in the commencement of the defence, I shall not enter on the general question of the unhappy rebellion which has laid waste the frontier districts, its causes or progress,—nor shall I yet bring to your notice the general conduct of Field-cornet Botha throughout the entire period of the disturbance,—thoroughly loyal as this has been proved to have been; but in chronological order I shall lay before you the accusations which have been made against this man. I shall trace the history of this indict-

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ment, and, giving you the dates at which the charges were from time to time preferred, as they were invented, I trust I shall be able to elucidate much that may now seem mysterious; and that at the conclusion you will be able to understand why much of the perjury which you have been condemned to hear. has been sworn against the prisoner. Beginning with the accusations in the order of time at which they were first preferred, I call your attention to the second count before entering upon the first,—for the second count, though referring to an offence alleged to have taken place on the day after the matters alleged in the first count, contains an accusation which was paraded for more than a year before the first charge was heard of by any magistrate. This accusation—the Mango charge—was made on the 27th January, 1851. On this day a statement was made by Mango, one of the Fingoes who has been examined here, before a magistrate, to the effect that at Fort Armstrong, on the 25th January, he and two companions, being on Government duty, had been robbed of their horses and maltreated by Andries Botha. This statement, sent by the magistrate before whom it had been taken to the Colonial Office, was immediately and indecently circulated throughout the length and breadth of the land by the newspapers, and on the strength of the assertion, contained in this statement, and this only, Botha was held up to public odium and indignation for the space of a year, as a rebel, a notorious rebel, throughout the frontier districts, and especially by that portion of the press which professed to speak the views of the Government. It is my duty to animadvert upon this fact, for this statement or deposition, whatever it should be called,—admitted to be the foundation of all the accusations which are now heaped against Botha,—is now, after the evidence which has been given in contradiction of the Fingoes, admitted to be of such doubtful truth, so utterly weak, "the weakest portion of the whole case for the prosecution," that my learned friend, the Attorney-General, scarcely can ask you for a verdict upon this charge,—intimates, indeed, that if he were a juror, his verdict would be that of acquittal on this count,—and virtually renounces Mango and his associates. Do not banish from your minds, gentlemen, that immediately after this statement was made, the accusation of rebellion was circulated, and the man at the bar publicly and repeatedly charged with the crime of high treason. That statement is now found to be false, the evidence of Mango and his crew almost admitted to be falsehood and perjury,—that is found to be falsehood and perjury, which, on the original indictment, was the chief charge against the prisoner, and which would have been the sole charge upon which it could have been expected of any jury that they should find Botha guilty of high treason,—if evidence of convicts for life had not, at the eleventh hour, been dragged from the Bain's Kloof convict station. It is undoubted, and this I admit readily to my learned friend, that the persons, who were active in despoiling the three Fingoes, Mango, Boko, and Pempeni, of their horses and guns, in the midst of rebellion,—these men being known to be then engaged in Government service,—were guilty of high treason. It is clear that the robbers were rebels. But it is equally clear that

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Botha was not one of these; he was at the time not at Fort Armstrong; and the Fingo, I do not now inquire from what cause, made originally a false charge, and knowingly came forward and committed perjury. The clearest evidence which it is possible for a jury to require has been brought forward in proof of this,—evidence that cannot be controverted. It has not only been proved to you most clearly, gentlemen, that Botha was not present, on the testimony of persons who were present, and who must have seen him if he had been there; but it has also been proved to you most satisfactorily, on evidence that cannot be impugned, and has not been impugned, that on that morning, the 25th January, at sunrise, at the very moment of the robbery, Botha was at Philipton, six miles off, to which place he had gone on the evening before with the Rev. Mr. Read. You have, in the first place, the positive evidence of persons present at the violence committed on the Fingoes, —and who assisted the Fingoes,—contradicting every word of their statement respecting Botha's presence; and in confirmation of this, you have before you the clearest proof of *alibi*, that is, presence in another place, which can possibly be submitted to any court. With respect to Boko,—the Fingo who first crossed over to Fort Armstrong,—take Jordaan's evidence. Boko immediately after he has come over, is seen by Jordaan, having just dismounted at Brass's house; Jordaan hears the whole of the conversation which has been detailed by Boko,—the examination to which he was subjected by Brass,—the remarks made about the Fingoes story that he had come from Joseph Read,—the expressions about the white hat-band,—and it is impossible that Botha could have been present at this conversation and active in this conversation, without Jordaan's seeing him. Is Jordaan impeached? Not in the slightest degree. It is proved, indeed, that in the midst of the confusion he behaved loyally and well, and to his kindness and interference the Fingo admits that his safety from the violence of the rebels is due. Jordaan must have seen him, and Izaks must have seen him,—for Izaks saw the whole transaction, being there a few moments before Jordaan. He had seen the Fingo ride up and dismount. He heard the whole of the conversation, which was interpreted to him, word for word, by Jordaan, and saw the whole of the violence done to this Fingo. Well, these men swear to you most positively that they did not see Botha; they swear that it was impossible he could have been there, unseen by them. Gentlemen, his Lordship, the Chief Justice, must excuse me if I differ entirely from him with regard to these Fingoes, especially as to the manner in which they gave their evidence in that box. His Lordship noticed to you, approvingly, the celerity and readiness with which they answered all questions. I, too, draw your attention to that celerity and readiness,—their malicious eagerness to damage the prisoner—I may add, their flippancy. Never, indeed, have I seen greater volubility than they exhibited, words not following, but rushing over words; not a question put, but the answer given almost before it could have been well heard. This is a celerity most suspicious, a flippancy which should tend not to uphold, but to discredit a witness. Opposed to this celerity and flippancy, you had a cautious

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anxiety not to exceed the bounds of truth, the earnest wish to adhere to the obligations of an oath: for the Hottentots knew what they undertook by the solemnity of an oath,—the Fingoes, who swear as solemnly by their interpreter, Mr. Cyrus, as by their God, did not. You have seen the quiet, calm manner of the Hottentots and their evidence, given in such a manner as to compel you not to doubt them, but to doubt, and more than doubt, the Fingoes when in conflict with them. The evidence of Jordaan and Izaks, to which I have hitherto alluded, refers to Boko only. Subsequently, however, after the arrival of the other two Fingoes, if I remember rightly, the Fingoes state that they were taken by these men to Groepe, and that to them they owed their lives. If Botha had been there during any portion of the time, must they not have seen him? But they swear that they did not. An interval elapsed between the arrival of Boko and the coming of Mango and Pempeni. According to the Fingoes, Botha was everywhere. Mango swears that immediately on his coming to the gate Botha was at hand, and commenced his violence against him. Christian Zeeland, who was with Mango, having, when he heard of the injury to which Boko had been subjected by Brass, gone over the drift to assist his companion, and whose assistance was indeed of value, as, according to Pempeni's statement, he prevented one of the other men, who had gone down with less good intentions, from firing at him,—Christian Zeeland did not see Botha, and must have seen him and heard him if, in truth, he were so conspicuous as Mango says he was, for he rode up at the same moment. Remember, gentlemen, that with this accusation before them,—for it had then for some months been paraded in the newspapers,—the gentlemen whose duty it was to prosecute the crime of rebellion before the courts-martial, dismissed the charge, and Botha, who had been confined at Fort Hare for the purpose of being tried, was liberated. Aye, knowing well the deadly enmity of Fingoes to Hottentots, the hostility on many occasions shown especially against Botha, those officers who were at Fort Hare to act as their duty bade them towards traitors, and whose high characters forbid the merest assumption that they could act otherwise than their duty bade,—these officers, having before them this trumpeted charge, having at Fort Hare the witnesses,—for it is proved that most, if not all, were there,—did do their duty. They inquired, for you must take for granted that they did enquire, and virtually tried and acquitted Andries Botha on this charge. Gentlemen, if on this count the case for the defence rested here, I should not require to speak another word, but should be certain of an acquittal. But the case does not rest here; we have had the evidence of his absence from Fort Armsrtrong; the evidence of his presence at Philipton is of equal, if possible of yet greater, strength. But before entering on this portion of the defence, I would for a moment draw your attention to the malicious hatred—growing by degrees in the case—shown by the Fingoes against the prisoner,—and I shall exemplify this by Mango. You have observed his idea of the obligation of an oath, what notion he has of the truth of matters to which he has sworn twice. In this trial, Botha must be proved guilty of all, and of more than was actually done by any one to these Fingoes, and therefore

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Mango swore here that "Botha took the letters,—he took the haversack in which the letters were," and the witness did not know what became of the letters. I reminded him that he had sworn twice before, once before Mr. Calderwood and once before Mr. Hudson, that the letters were, instead of being in the haversack, in his pocket; and that he himself having taken them out of his pocket to give to the minister, some one whom he did not know, not Botha, had snatched them from him; and that so far from not knowing what became of them, he saw the letters subsequently given to Commandant Groepe, who gave them to the Rev. Mr. Thomson. This, though sworn twice, he positively and stoutly denied,—denied his oath, twice given with all mock solemnity, and simply because he has now come down here, with improved memory and yet stronger malice, to swear anything and everything that may weigh in the minds of the jury to the prisoner's prejudice. But it is scarcely necessary to waste words on the character of the evidence given by these men. To proceed. In addition to the evidence of Jordaan, Izaks, and Zeeland, to which may be added that of Scheepers and Magerman,—and the fact that Commandant Groepe caused most diligent search to be made for Botha immediately on that morning, and, as he has sworn to you, is most positive that Botha was not at Fort Armstrong on that morning,—it is now my duty to lay before you the evidence which proves that he was at Philipton. That most respectable old man, Commandant Fourie, who for forty years has borne the highest character in his country's service, and who so well deserved the compliment paid him by his lordship when he left the witness box, has sworn to you most positively, that on the morning of the robbery of the three horses, at the time that the report was brought by Zeeland of the robbery, Botha was with him, and that he had been with him constantly from before sunrise until the time Zeeland came. Zeeland had left Fort Armstrong some short time after Mango and his companions had been despoiled; he had taken a horse from one of the robbers, which he concealed, while he rode away to make the report to Fourie, the only one of the field-cornets who still appeared to possess authority,—and on arriving at Philipton he finds the two old men, Fourie and Botha, sitting quietly together, conversing at Fourie's house, where Botha had been from before sunrise, the plundering of the Fingoes having been perpetrated at and after sunrise! The two old men had been conversing, says old Fourie, respecting the excesses which, on the previous morning, had occurred at Fort Armstrong, and on account of which Botha had left that place in disgust,—when the messenger came, and, to their surprise and indignation, brought the intelligence that yet wilder excesses had been committed immediately before his departure. Andries Botha was as ignorant of what was done to the Fingoes that morning at Fort Armstrong as was old Commandant Fourie himself. Gentlemen, this is proved not only by old Fourie; John Fourie, his son, Andries Hatta, his son-in-law, who were with their father nearly the whole of that morning, and who were present during the greater part of Zeeland's relation, confirm him. They state positively that on that morning, being the morning of Zeeland's report, at sun-

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rise, Botha was with their father at Philipton when the act with which he stands charged was being committed at that same time, six miles off, at Fort Armstrong. All these witnesses add that they remember perfectly, the evening before, Botha had arrived at Philipton with the Rev. James Read. The Rev. Mr. Read, who on the day of the seven horses, the 24th Jan., the subject of the first count, had returned to Fort Armstrong, proves most clearly that on the very afternoon of that 24th, he left Fort Armstrong with Botha,—Botha having on that day expressed to him his sorrow and disgust at the proceedings of the morning, and that he arrived with Botha towards evening, at Philipton; that he saw him late in the evening at Philipton; and that on the following morning, the 25th, the date of the transactions of the second count, he saw him again early, though of course not so early as Fourie and his sons. And yet the perjury of these Fingoes, Mango, Boko and Pempeni,—for perjury it is,—for mistake is not possible,—make him present at Fort Armstrong when he could not possibly have been there. Gentlemen, if it were possible for me to mingle with the honest evidence which I have adduced the evidence of convicts for life, for the first time in the annals of jurisprudence brought as witnesses in a case of high treason, I could call to your notice that, if the remotest chance existed of establishing that Botha was present at Fort Armstrong on that morning, the convicted rebels, Hermanus Lotz and Hans Groepe, who were there, would not have hesitated to implicate him; but this they would not hazard, for in this old matter they knew abundant evidence existed to rebut the charge,—but they knew that in what they did swear, less hazard of the kind existed, and they were more safe. To this mass of evidence, the only thing that can be said is, there certainly was a report made to Commandant Groepe, or he would not have caused instant and diligent search to be made. This is explained in the fullest degree by the conversation at Fort Hare, in March, between Jordaan and the Fingo Boko. You remember Jordaan's evidence on that point: surprised that Botha had been implicated by Mango and Boko, he inquired of the latter, "How can you say Botha was there when he was not?" Boko replied, "I name him as the head of the people who plundered us,"—as we should say Sandilli has committed this robbery, Macomo has made that attack, when in fact not the head men or chiefs themselves were engaged, but their people. What, from Boko's explanation, it is clear he originally meant was, that the men who had committed the robbery were not Groepe's people,—he considering Groepe to be chief only of the Bastards,—but Botha's people, Botha being considered by him as having authority among the pure Hottentots and Ghonahs. There were, it has been proved, many Gonahs in Botha's field-cornetcy; William Brass, evidently the most violent and active of the robbers on that occasion, was a Ghona. There were more Ghonahs present; and the complaint against Botha, originally meaning the people whom we consider Botha's, was not unnatural, though it has since degenerated into rank perjury; after, to these men, it became clear, on the mention of Botha's name, that, for certain reasons, what was sought was something to criminate Botha personally. Unless, indeed, the whole

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search after Botha was not originally a mistake of Groepe's, and at the time the name "Coto," the Kafir name of William Brass, was mentioned to him as the name of the ringleader. But with the mass of proof which has been offered, it is needless to enter into these conjectures. This is clear, that upon the false and utterly disproved statement of the Fingo Mango, made at Fort Hare,—a statement into which, although twice sworn to by him, he now swears that falsehoods entered which he never said,—upon this statement, containing a charge now almost given up by the Attorney-General, the old man at the bar was called a rebel; this statement was sent home to Earl Grey to prove this man,—for many reasons obnoxious,—a rebel; the most hasty publication in newspapers is given to this statement, which had been transmitted to the Colonial Office officially;—and this done, there were parties committed to the task of proving the man a rebel. Having disposed of the second charge, the first in chronological order of accusation, I proceed to the first count, and to trace its history. I do not hesitate to say, gentlemen, that the first charge was first thought of as a makeweight to the second. Mango's statement of January, sworn before Mr. Calderwood in July, 1851, at the same time as Boko's and Pempeni's, is re-sworn at Graham's Town before Mr. Hudson, in February, 1852; and at this latter date, a twelvemonth after the occurrence, for the first time, does there appear from the preliminary examinations any information before a magistrate or any man in authority made against Botha by any of the Fingoes of the first count,—the alleged robbery of the seven horses. It was attempted to be proved that one of the men did, on speaking to the magistrate, Mr. Wienand, report Botha: but this has failed. Mr. Wienand has told you that Klaas Mafee has sworn falsely,—he never received such a report from Klaas Mafee, or any one else. Commandant Groepe, too, swears that it was never suggested to him that Botha had any connection with the robbery of the seven horses. But, gentlemen, it is my duty to submit to you, and his lordship will bear me out in this view of the law, that the offence charged in the first count, as it has been proved before you, by whomsoever committed, does not amount to high treason. My learned friend, the Attorney-General, felt the difficulty, and was constrained to maintain that that which was not high treason in Hermanus Lotz, the provisional field-cornet of Fort Armstrong—in reality the second in command at that place—the ringleader in the affair,—is high treason as soon as the magic name of Andries Botha, who possessed no men at all, and no authority at Fort Armstrong, was mixed up with the transaction. I submit, and if wrong, I shall be corrected by the bench, that acts committed with a particular intent, and not with any general view to subvert or impair the power of the government, blameworthy though they may be, are not acts of high treason. Nor, before this indictment, was this particular act considered one of high treason. At the period of the court martial in March and April, 1851, when it was well known that Field-cornet Hermanus Lotz had been most active in taking the horses charged in the first count from these Fingoes,—when Field-cornet Lotz was in custody to stand his trial on the charge of having been implicated in this rebel-

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lion,—he was not charged with participation in the robbery of these seven horses, although on other charges he was brought to trial and convicted. And those intrusted with the conduct of the courts-martial judged rightly. The facts of this alleged high treason are these. On the 21st or 22nd, certain horses, the property of residents at Fort Armstrong, had been given to these Fingoes, who also resided at Fort Armstrong, in order to take a message from the magistrate to General Somerset at Fort Hare. They are sent further to Col. Sutton by General Somerset. Colonel Sutton seeing that the horses ridden by the messengers are tired, gives them fresh horses wherewith to return to Fort Armstrong. The horses belonging to Hermanus Lotz and others are left behind at Fort Beaufort,—and the Fingoes are seen approaching, mounted on strange ones. Immediately those persons who had lent their horses for the purpose of assisting the magistrate, rushed to meet the Fingoes, crying out, "Where are our horses?" They seized each a horse, as Lotz told you, in security of the one belonging to each which had been wrongfully detained, and this, with some rough language, probably, on the part of some of the angry claimants of horses, was the whole transaction. Is this treason, even if Botha were engaged in it? which he was not? It is perfectly clear that the object in this robbery was a particular one,—an intent to secure the recovery of their own horses by those who claimed to be owners,—and in the confusion, indeed, the parties whose horses had been taken were, if not justified, at least excusable in some degree, in thinking that, as their own property was left at a place whence they could not recover it, they might be entitled to claim these horses in lieu of their own. This was foolish and improper conduct on their part, indeed, but not treason, and never charged as treason at all against any one of the rioters,—never charged as treason until brought forward to strengthen the Mango accusation, which was failing, and to create a stronger impression against Andries Botha. My learned friend stated, that though this was no treason by Hermanus Lotz, the Fort Armstrong field-cornet, who was active in the deed, yet it was an act of treason by Andries Botha, who was not active,—because, forsooth, he was Assistant-Commandant to Commandant Groepe! He forgot, while arguing on this assumption, that in another portion of his own address it was made matter of reproach to Botha, that he had not been appointed Assistant-Commandant to Commandant Groepe,—that Groepe, when requested, had refused to sanction the appointment. Gentlemen, if Botha, not being Assistant-Commandant, had ventured to act as such at Fort Armstrong, as the Attorney-General now says he should have acted,—in opposition to Groepe, and after his refusal to appoint him,—you would have had the prisoner at this bar for high treason, on the ground of disobedience to the lawful authority, and you would have had some ground for finding him guilty of high treason, for venturing in the midst of this confusion to assume an authority opposed to that which, at the time, was legally constituted. But it is said, Jan Fourie interfered to protect the Fingoes from ill-usage, why did not Botha? This in him was treason. Gentlemen, once he had energy—once possibly he had the physical power which a hale young man like Jan Fourie enjoys, but

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now he is an old man of nearly three score years and ten; moral power there was no more. Commandant Groepe, and the Rev. Mr. Thomson could venture no effort to restrain the excited people,—and these people were under the command of Groepe, not of Botha. Mr. Thomson had no authority—no influence. This very violence was enacted under the orders of Lotz, the second in command to Groepe; there was enough indeed to disgust Botha, but how could he interfere, unless he had been a strong and young man, possessing the physical strength of Jan Fourie. Botha is proved by Jan Fourie to have been standing some 30 or 40 yards off with Commandant Groepe and Mr. Thomson while the Fingoes were assaulted. Why, I ask, if high treason has been committed, is not Commandant Groepe, the commandant of the post, brought to this bar for high treason? Why, if high treason has been committed, is not the respected minister of Balfour at the bar for that crime? For they, too, did not actively interfere,—they could not; but because that old man did not actively interfere, he alone is to be condemned for not doing what was beyond his power,—and not only those in the same position with himself, but the very perpetrators of the deed, are to be held guiltless? Gentlemen, you cannot look upon this charge, first brought forward several months,—aye, a year, after the date of the alleged offence,—except as a make-weight to the second. The whole truth of this charge is this;—it was clear that Botha must be hunted down, and some Fingoes, a year after the alleged occurrence, whether they believe in a God or not,—whether they believe in a state of future retribution or not,—are brought forward with the mockery of an oath to swear away the life of Andries Botha! But, gentlemen, it is proved, that on that day, having seen with his own eyes things that he could not prevent, he left Fort Armstrong in disgust,—for, possessed of no authority, he could not endure to see things going wrong as they were. He retired on this account to Philipton. This was the reason at the time assigned by him to the Rev. Mr. Read, whom he accompanied to Philipton. I must again refer to that convict evidence. Whom are you to believe of the two sets of witnesses produced by my learned friend,—those who disbelieve in a future existence and future punishment ,or those whose position is such that they need fear no temporal punishment more? For they contradict each other positively. Lotz, the convict produced, the active man in the assault on these Fingoes for the recovery of these horses, says that Botha was indeed at Fort Armstrong, but was not in the crowd, was thirty or forty yards off, and did not speak angrily to the Fingoes, nor appeared unfriendly to them at all. What becomes of the threatening language alleged to have been used by the prisoner? There is, indeed, one curious circumstance connected with the conduct of these Fingoes. In terror of their lives—dreading Botha especially—they go, —whither? To Philipton,—to the very place to which Botha has gone, and where he resides! Is this probable? I submit that the improbabilities are so great, that it is impossible for you to attach any credit to such evidence. If there had been any truth in the voluble and flippant evidence given by these men, with such readiness and celerity,—if it be true that at Philipton

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they made the charges, as now alleged, to Mr. Wienand, the magistrate, Mr. Wienand would not now have so positively and flatly contradicted this assertion. Their own conduct contradicts them,—Mr. Wienand contradicts them,—and those present at the violence committed contradict them. Jan Fourie, who acted right well in this matter, who recovered Byosi's gun, and secured a horse for the government, a witness of the highest respectability and unimpeached veracity, has shown you that the exaggeration of violence of which the Fingoes spoke, was false entirely. The men who took the horses were not armed; there were no threats of death,—no gun was presented at Byosi. Magerman, Scheepers, Groepe, prove the same. If, gentlemen, there had been any truth in the present statement, it would have been, at least, known during the sittings of the courts-martial of March and April, 1851,—it would not have been left to see the light in February, 1852. Botha would, at Fort Hare, have been tried by court-martial if any act of rebellion had been then charged against him,—and it would not have been your duty now to enter upon the investigation of this painful case. I shall not comment further on the animus of these men; their statements, in themselves contradictions, will be fresh in your minds. It is impossible that you could have any faith in the veracity of these men, on oath, when you heard their idea of the obligation of an oath, —even were their story probable and themselves uncontradicted. Before passing from this count, I would recal to your notice one circumstance which, more clearly than aught beside, were there any hesitation in your mind, shows the falsehood of Klaas Mafee, and proves the impossibility that any charge against Botha could have then been made to the magistrate. Mr. Wienand said, "Had any such charge been made, I should certainly not have taken Botha as one of my escort from Philipton to Fort Beaufort. I would not have had him with me at that time of difficulty and danger,—had there been any communication to me, or did any suspicion on my part exist, that he had committed any acts of a rebellious nature." The offence charged in this count took place on the 24th January; Mafee professes to have made a charge against Botha on the day after to Mr. Wienand; and on the 29th January, Mr. Wienand, knowing Botha to be a faithful and loyal man, takes him as one of his escort to Fort Beaufort. On this evidence, then, you could not and would not find this man guilty of high treason,—even did the offence, as proved, amount to high treason on the part of any one, which certainly it does not. Gentlemen, I now proceed to the third count, and I must confess that it was with considerable astonishment that I heard my learned friend's remarks on that count——

Chief Justice.—Mr. Watermeyer, if it would not interrupt you, I should wish you to point out what you allude to as contradictory in the statements of these Fingoes. I confess I do not recollect what you so strongly remark upon as contradictions. And the jury may not recollect them, as I do not. I am sorry to interrupt you,—but I think it due to the prisoner.

(Mr. Watermeyer read from his notes some portions of the evidence of Boko, Mango, and Byosi, and proceeded.) These are

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some of the strongest contradictions in addition to those to which I have already referred,—and I feel certain that the jury will have had their attention fixed on many besides. I was speaking of the third count, gentlemen, and saying that I was much surprised at the manner in which my learned friend remarked upon that count. A witness is produced,—of whom my learned friend boasts, because his intellect is not far above that of an idiot. A secret is to be divulged,—and an interview between Botha, Uithaalder, and Macomo to be opened to your view. What does this poor creature prove, if he prove anything. He proves that on some occasion, while he was at Uithaalder's camp, Botha came there too. We might admit this, if necessary. Botha had been there thrice, at least, with other most loyal men,—to dissuade the infatuated rebels from persisting in their evil course. But Botha was at Uithaalder's camp a month before the attack on Fort Beaufort. A month before the attack on Fort Beaufort,—that is, on the 7th December,—Uithaalder's camp did not exist; the attack on Fort Beaufort was on the 7th January,—and up to that time no camp of Hottentots existed at all! All was peace then;—the Kafir attack on the military villages, the first onset of the war, was on Christmas-day. This was his statement, obstinately repeated here, as to the time of his interview. The charge in the third count is not this, however, but that the interview took place on the 7th February,—a month after the attack on Fort Beaufort. This, indeed, was sworn by him before the magistrate at his preparatory examination, but is now obstinately contradicted. Nor, when examined here, did he know anything of the large mass of matter sworn to by him in his preparatory examination only a couple of months since at Graham's Town,—and purporting to be an account of transactions which had occurred more than a twelvemonth before! Gentlemen, I did not cross-examine this poor wretch,—I scarcely put a question; I felt pained, indeed, that such a man should have been put in the grave position of a witness to take away the life of another. I felt the truth of the conviction which I had before entertained that the Eastern Province had been indeed raked for evidence to destroy Andries Botha, when I saw you doomed to listen to the evidence of an idiot for want of better proof! I did not cross-examine,—for I would not descend to expose yet more the misfortune with which the unfortunate man is smitten,—and to raise a laugh in mockery of his calamity. It might have been an easy task to involve him in inconsistencies; but reprobating the conduct of those who sent this man here, God forbid that I should seek to make sport of his state of affliction,—the most lamentable with which man could be cursed! It has been strangely argued that his incapacity is in his favour; he may have memory, forsooth, and he cannot possess power of invention! Botha was at Uithaalder's camp, as I have before stated, and, as has been proved by the evidence, with the most loyal purposes. Macomo, too, had been there on other occasions doubtless to consult with his ally, who was deaf to Botha's entreaties to abstain from his evil course. Will my learned friend say, that the incapacity of which he boasts may not, after so long a lapse of time, have led his witness to confound two occasions;—that having a recollection that Botha had been there on one occasion, knowing

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that Macomo had been with Uithaalder too, he vaguely brings them together, with about as much certainty as he has explained the time of his interview,—a month before and a month after the attack on Fort Beaufort. Does my learned friend seriously advise a jury whom he supposes gifted with common sense to convict on such testimony? I do not hesitate to say, that if this had not been a witness sent from the Eastern Province, he would not have been examined,—the prosecution would have been ashamed to produce him; we should never have heard of him, had his preparatory examination been taken here in the first instance. But all that comes from there must be exhibited in the witness-box, for good reasons doubtless, but which cannot make the statement of Jacob Nieuwveld's, evidence on which a jury may rely. As this man is a production from the rebel camp, it had been my intention to remark here on the credence to be attached to the evidence of accomplices, for the law of evidence in treason, in this point at least, is the same here as in England; but I shall reserve these remarks for a portion of the case to which they will be more applicable than to the evidence of this poor man. I dismiss this third count with pity, not unmingled with scorn. I now approach, gentlemen, to what my learned friend calls the cardinal point of his whole indictment. This is the first time in the annals of British history that convicts for life have been placed in a witness-box to prove the crime of high treason,—that convicted rebels, condemned to chains for life, have been called to prove another their accomplice in the very rebellion for complicity in which they endure their punishment. To within a very few years such evidence could not been heard at all. None of these men, who are now here to substantiate the charge on which the Attorney-General chiefly relies, could, a few years ago, have given any testimony. They now appear, not to give evidence confirmed by other unimpeachable evidence, but to give, I may say, after what you have heard, the only evidence which is before you in this most weighty charge. Not long since, as I have said, such evidence could not be heard at all; but, now that it can be heard under Lord Denman's act, I feel certain that in England a jury would be warned to attach no credence to it, unless materially corroborated. At least, the same caution would be deemed necessary respecting convict evidence, as is considered requisite in weighing the evidence of accomplices. My learned friend has stated the history, creditable to himself,—all the circumstances, as far as his office is concerned,—under which this evidence has been brought forward. I have stated previously, in the course of the trial, and I again most gladly avow, that throughout the whole of this case, the prisoner and his advisers have received not only justice but liberality from the Attorney-General; the utmost fairness has been dealt out by his office to the prisoner;—and as far as he and his subordinates are concerned, there can be not the slightest imputation of drilling and tampering with these unhappy witnesses. But I must not be expected to go further, if, in the conduct of the legitimate prosecution, I acquit those whose duty it was to prosecute. If I say that the Attorney-General acted fairly, and not only fairly but liberally,—far more liberally than most state prosecutors in a political trial would have acted,—

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with a purpose not merely to struggle for conviction, but to see justice done to the country and the man at the bar,—I have said all. I dare not, in justice to the prisoner, admit more. I cannot, with truth, state that all who were interested in this man's condemnation,—that the conductors of the illegitimate prosecution,—have acted with the same high principle. I know not how, I care not when,—for into this mystery I need not inquire,—but I am entitled to assert that there have been corrupt influences used to obtain the conviction, if possible, of Andries Botha. When I assert this, the reason must be plain to your minds. This man, liberated by the court-martial, acquitted by those specially called together to try the rebels, was again arrested, after having resided quietly at Eland's Post since his liberation in July or August, last year. It was expected that his trial would take place at Graham's Town on the occasion of the last circuit, held there in January. My learned friend thought, and justly thought, that on account of the excitement in the Eastern Province it was due to the prisoner that he should be tried here,—and accordingly he was brought to Cape Town. After the decision was known, up to the moment of trial, for some months, most corrupt influences,—influences that betray the corruption of the heart of those who exercised them,—were used to prejudice the community, the public generally, against the man. With what intent? There could have been no other object than to damn this man in the opinion of the public, and, in as far as the wicked attempt could be successful,—which God forbid,—in the opinion of the jurors who are selected from that public. A man about to be tried for his life,—to be presumed innocent until your verdict has found him guilty,—is, after his committal for trial, branded in public prints as a notorious rebel, called a traitor from beginning to end; and that before this Bain's Kloof evidence was known to the Attorney-General,—when the cardinal charge of this indictment was not dreamt of,—while the Mango accusation, now so utterly broken down, was the sole important matter against the prisoner. By the most unfair and un-English means, this man's character and life were sought to be taken away by newspapers professing to be the organs of the Government. It is a painful duty to be compelled to dwell on this; but when we know that with one of these newspapers the Government of the day was connected,—when in the very hall of legislation this connection was traced,—it was impossible for the most blind not to see the meaning of these constant attacks. This man's life was in jeopardy,—he was about to receive what honest men wished—a fair trial,—and then from week to week, from month to month, in the Government newspapers, he was branded as a traitor, and the verdict of the jury anticipated. Gentlemen, I am sure you will give me credit for not wishing to overstep the limits of my duty in this case. I would fail in this duty, and that man's blood might be chargeable on my head, did I not expose these machinations. I am sure that every word I have said in condemnation of this dishonest and un-English procedure has met the assent of the Attorney-General,—that he, too, in his heart, detests these corrupt and dishonest practices. Such has been the conduct of certain parties: and I cannot keep from my mind the certainty that those who would

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not shrink from the one wicked deed, would be ready to do the other: and, if possible, means would be adopted by them which will not be explained to me or to you. Gentlemen, it is more than probable that there would be tampering and drilling of witnesses. Well, when it was positively known that in the present May sessions,—on the indictment in which the Mango charge was the cardinal point, and the present cardinal charge was yet entombed at the convict station,—this man would be tried,—letter after letter, remark after remark, appeared in these newspapers, talking of the evidence that might be got to ensure the conviction,—accusing the Attorney-General of dereliction of duty in not having provided these witnesses. One of these witnesses was Mr. John Green, the sole evidence not from Bain's Kloof, on a portion of the fourth count, and proved to be perjured on the sole point of his evidence that had indeed any reference to the accusations against Botha. Mr. John Green wrote a letter to the *Graham's Town Journal*, at the end of March last, a letter redundant with malice and filled with mysterious hints of the certainty of Botha's guilt, and his, Mr. John Green's, ability to establish this guilt. This letter was nothing but an exhibition of his malice,—for what little, in truth, he did know, you have seen,—although he sought to give a suspicious interpretation to every circumstance. I put the question to this man,—"Why, instead of writing to a public newspaper, did you not, if you knew anything that, for the public interests, should be known, communicate with the Clerk of the Peace of your division, to the Attorney-General here, or a Magistrate?" This would have been the honest course. Ready enough to answer any question that would doom Botha, he could not answer this simple question; ready enough to attempt to prove all to which his malicious mind could be stretched,—to this he could say nothing, and remained dumb. In contempt, I spared him the trouble of answering. Gentlemen, the Attorney-General has said, if I remember rightly, that there could be no concert, no communication between these convicts. He has said that they, the last three at least, came to Cape Town, not knowing for what they were required. But he will excuse me if I submit to you that after the station had been questioned about Andries Botha, the trial of Andries Botha must have been spoken of there. I do not suppose that Bain's Kloof, where hundreds of people are congregated and daily meet, could alone be ignorant that Botha was to be tried,—when every man in the colony besides knew that his trial was at hand. And this being known to these convicts, and they having a peculiar interest in the trial from the fact that it referred to the time and circumstances which caused their own conviction,—could there not be conversation between them on the subject,—could there not be concert? I now approach this count more closely. You will remember that the first indictment served upon Andries Botha, and on which he was to have been tried at the present criminal sessions, consisted but of four counts,—of which the second was the important one. On the first, as connected with the second, I have already remarked. The third rested on the idiot; and the fourth was the paltry charge about the horse given to

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his son, resting on the sole evidence of an acknowledged rebel. On the very day fixed for the prisoner's trial on this indictment,—a second indictment was served on the prisoner,—the convict revelations, kept in their own breasts for a year, were discovered,—and the additional counts, one with reference to the battle of Balfour, the other with reference to the skirmish at Lushington, were added. Only on the very day of the intended trial came these charges,—only a day or two before he was to have been brought before you, gentlemen, was the discovery made of the cardinal charge, that on which the whole indictment hinges. Remember—that, without any knowledge on the part of any one of what is now the sole weighty charge against Botha, he has been for a whole year branded as a traitor! I beg you to have this in your memory, and to draw your own inferences. Remember that Lotz, Hans Groepe, Bantam, and April were all at Fort Hare at the time Botha was there, and when accusations were sought against him. There was no little anxiety on the part of several to connect Botha, if possible, with the rebellion, and the Mango charge had been published for a couple of months, and constantly commented on; many were then anxious for his conviction. Gentlemen, if, then, these men had, in truth, known aught against Botha, they would then have spoken out, for his conviction would have been their pardon; if they had then established that Botha had been engaged in the Balfour fight, they would have been certain of liberation, and he would not have been liberated! But this is not enough; not only do some of these men personally pretend to have known that he was at Balfour, and are silent,—but Botha, who, according to the prosecution, even if connected with the rebellion, preserved throughout the most cautious demeanour striving to be deemed a loyalist,—at Fort Hare publicly boasted in the presence of 50 or 100 men, that he had been connected with the rebels—that he had been in the engagement at Balfour;—and at Fort Hare, while the trials are proceeding this is kept secret by all who heard him; all these men stoically hear their own condemnation to death,—know that Botha is chiefly sought after as being supposed the most influential of all—know they can obtain their own pardon,—and reveal nothing until after a year has elapsed. You will remember that Green, who in anxiety to sacrifice Botha yields to none, stated here not only that he saw Botha, armed with a gun and on horseback, go to the Balfour fight,—but said also that he reported this, during the sittings of the court-martial at Fort Hare, to Mr. Wienand, who was then assisting the deputy judge advocate, Lieut. Griffin. This Mr. Wienand has positively sworn to you he did not do. On Mr. Wienand's oath, John Green, the sole evidence of an unimpeached nature, to support the testimony of these convicts, is perjured! I must yet further remark on the position of these convicts. The Attorney-General says that no threats or inducements were held out,—great caution in this matter was observed. No threats!—what threats could be held out to persons already punished with the severest sentence the law can inflict? No inducement, no reward does he say? The very fact that the fetters are struck from the limbs of these men, that they are released from their life-long toil at Bain's Kloof,—that respite is a reward, and a great reward. Those

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who have read somewhat of the history of New South Wales know that convicts from Norfolk Island have frequently come into courts of justice,—(the fact is, I believe, mentioned in Mr. Justice Burton's book,)—and have sworn what the court, the jury, the whole audience knew to be rank perjury, to escape, for a time, from that scene of misery,—and to feel themselves, but for a few days, in a position more resembling that of free men. But is there not more?—if Lotz's explanation of the causes of his conviction is believed, if truly he never was a rebel, and through the misconduct of Botha and loyal old Fourie, as he would have you credit, he has been dragged into this,—it would be harsh beyond measure that that man, loyal at heart, prevented from doing his duty by Fourie and Botha,—compelled by Uithaalder to do something of which his conscience disapproved, and for which he was condemned to death, and is now a convict for life, should yet endure punishment; if credit is attached to him, the government are bound, in justice to that man, to release him,—his pardon should be immediately granted. It is therefore not right, gentlemen, it is not true, to say that these men are at all in the position of free witnesses,—having no reward, nor hope of reward. The contrary is the fact. They have come here to palliate their own conduct, to explain that the conduct of others was more to blame than their own. My learned friend did not go quite so far as to say that it was not natural that they should entertain some hope of pardon or reward,—that this might not be some inducement therefore to invent evidence against Botha; but he said his letters showed that the instructions were, that not only facts against the prisoner, but facts in his favour should be ascertained,—all, whether making for or against him should be taken indiscriminately. I am glad these letters were read, for they show the spirit of fairness and justice in which the whole case has been conducted by the Attorney-General. But, although this was his honest intention, is it not clear that such intention must fail; that facts only against, and not for, the prisoner would be ascertained from such men? It was known at the convict station that Andries Botha was to be tried, and think you that these men, who know that the Government proceed against him,—who know the Government to be the arbiters of their own fate,—who believe that when the Government prosecute, it is intended to prosecute to the death,—and that, when inquiries are made by the Government for evidence, what is wanted is not evidence of a favourable nature, but the most damning evidence to ensure conviction,—that these men would strain their invention for any purpose but to give this damning evidence? Gentlemen, I have already said that until lately such evidence has never been admitted in any case; and I repeat that this is certain,—if under Lord Denman's act such evidence were now brought forward in a case in England, the jury would be charged to receive it with the utmost caution. Of convicts, in the position of these, much stronger corroborative evidence would be required than is now required when accomplices are examined; and the rule with respect to the latter is very strong. Of course, the credibility of the witnesses remains with the jury; but with the judges of England, the men best practised in the just administration of

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criminal law, and exercised in the weight of evidence, it has now become a practice, almost equal to law, to charge juries that the evidence of accomplices shall be received only when confirmed by other unimpeachable evidence. I quote to you from Phillips on Evidence, vol. i., p. 31,—a passage which shows how strong is the application of this rule:—"Great "injustice would result if it were the practice of juries to con- "vict on the unsupported evidence of accomplices, whose tes- "timony, though admitted from necessity, ought always to be "received with jealousy and caution. For upon their own con- "fession they stand contaminated with guilt; they admit a par- "ticipation in the very crime which they endeavour by their "evidence to fix on the prisoner. They are sometimes entitled "to reward upon obtaining a conviction, and always expect to "earn a pardon. Accomplices are, therefore, of tainted cha- "racter, giving their testimony under the strongest motives "to deceive; and a jury would not, in general, be justified "in giving to such witnesses credit for a conscientious regard to "the obligation of an oath. Sometimes they may be tempted "to accuse a party who is wholly innocent, in order to screen "themselves or a guilty associate; and if the prisoner has been "their participator in crime, they may be disposed to colour "and exaggerate their statements against him, with a view to "hide their own infamy, or, by obtaining his conviction, to "protect themselves from his vengeance, and secure the ex- "pected benefit. The doctrine, therefore, of a legal conviction "upon the unsupported evidence of an accomplice has been "greatly modified in practice; and it has long been considered "as a general rule of practice, that the testimony of an accom- "plice ought to receive confirmation, and that unless it be cor- "roborated in some material part by unimpeachable evidence, "the presiding judge ought to advise the jury to acquit the pri- "soner." And further on, in p. 33, it is laid down, that the quality of the evidence is not cured by the number of tainted witnesses. "The practice of requiring confirmation, when "the case for the prosecution is supported by an accomplice, "applies equally when two or more accomplices are brought "forward against a prisoner. In a case in which two accom- "plices spoke distinctly to the prisoner's guilt, the judge "directed the jury, that if their statement were the only evi- "dence against him, he could not advise them to convict, ob- "serving that it was not usual to convict on the evidence of "one accomplice without confirmation, and that, in his opinion, "it made no difference, (with respect to the practice and the "propriety of convicting,) whether there were more accomplices "than one." Gentlemen, if these are strong expressions in reference to accomplices, how much more strong would they have been if used in reference to convicts. When this book was published in 1843, though the tainted evidence of accomplices was received from necessity, subject to these cautions, the yet more tainted evidence of convicts for life, now introduced only from necessity also, and yet more to be avoided than that of accomplices, could not be received at all. It is not enough that they give their evidence without inducement or threat, if this be deemed possible, but that of what they do state there shall be unimpeachable evidence in corroboration. But what is expected, and what such men

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have been taught to expect, is clear from a paragraph of one of the newspapers to which I have alluded, at a time when it was known that the trial was to come on almost immediately. In the *Monitor* of the 10th March, after speaking of some witnesses who had come down in the case of the "notorious Andries Botha," it is added, that Hans Vriester and Jacob Nieuwveld, two prisoners for rebellion, had also arrived to give evidence against him, and that they would doubtless be pardoned "if their evidence were made available."

CHIEF JUSTICE.—Has no other newspaper written on the subject?

Mr. WATERMEYER.—The *Graham's Town Journal.*—

CHIEF JUSTICE.—The whole practice is detestable; whether it is done from improper motives is another thing. But you don't mean these are the only papers that have done so? Have you seen the last *Commercial Advertiser?*

Mr. WATERMEYER.—I am in the habit of seeing that paper; but have not read the last number.

ATTORNEY-GENERAL.—I must say that the *Cape Town Mail* and *Commercial Advertiser* have both followed a course which is not proper in this case.

CHIEF JUSTICE.—So much so, that they ought to be called before this Court; but I may have to make some remarks on this subject presently.

Mr. WATERMEYER.—Now, gentlemen, let us examine this convict evidence—bearing in mind the caution respecting its value—more minutely. Take the evidence of Hermanus Lotz. This man would have you believe that, being at Fort Armstrong on the morning of the Balfour fight, he was terrified exceedingly by Uithaalder, who wished him to assist him at Balfour,—and his life was in danger from the rebel general. That on General Somerset's approach, knowing himself to be a loyal man, but fearing to be considered a rebel, he fled, for the purpose of safety, to Philipton,—an acknowledged peace-place. That, while anxious to reach Philipton for safety, and most anxious to avoid the rebels, he goes, not the direct route to Philipton, but rushed to the very place where Uithaalder and his men, whom he dreaded, were. Dreading to be considered a rebel, he rushed to the rebels,—fearing for his safety, he preferred rushing to where his safety was most endangered,—and in the midst of this danger remained with two children, as he says, for upwards of half an hour! With Botha at a distance of upwards of 400 yards,—as far as from the court to the jetty, the horses being between him and those engaged in the fight, he distinguishes, in the midst of the smoke, Botha, and Botha alone, so as accurately to describe his dress! Having seen this, leisurely he proceeds to Philipton, whither he had been anxious to escape in haste,—and there again saw Botha in the afternoon,—who then, the cautious, wary Botha, enters into conversation with him, and tells him, the loyal Lotz, that he, Botha, had been in the Balfour fight in the morning! To him alone, at Philipton, on that very day, Botha confesses that which in the possession of the loyal Lotz ought to have cost him his life! This man complains that Botha's conduct, and

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Botha's order on the 22nd January, caused his own misfortune, and knowing these damning facts, and that there was the utmost anxiety to obtain evidence against Botha, he is charitable enough not to desire his own pardon, and kind and considerate enough to the man who has injured him not to say a word, when he could have secured his conviction. But he described the dress: he knew Botha's usual dress, gentlemen, and therefore could describe,—and, in truth, he did see Botha on that day at Philipton, and so if he could remember could give the description,—although he did not see him at Balfour, as he now falsely swears. I appeal to you that the unconfirmed evidence of this man and his comrades should have no weight with you. If there had been a particle of truth in what they now state,—they would not have been here now,—he would not be here now to await your verdict. These things would not have slept for a year. Need I add anything to my remarks on Lotz's evidence. I think not, gentlemen; but you will remember that, in endeavouring to screen himself for his conduct in the robbery of the seven horses,—which has now become high treason, and with which Botha is charged,—he told you that he had received Commandant Groepe's sanction for his illegal act. This is positively contradicted by commandant Groepe. Gentlemen, the man who states purposely what is false in one point,—will not hesitate to perjure himself a second time, when the motives for such perjury are yet more strong. I must proceed with this convict tale. Arend April, who is out with his cattle that morning near Balfour, he belonging to Uithaalder's rebel camp,—strange that he should be with his cattle quietly while his chief was fighting, herding his cattle between Balfour and Fort Armstrong,—sees Botha and a mounted party between Balfour and Philipton. Look now at the improbability, nay, the impossibility of the truth of this man's evidence. He noticed Botha and Botha alone. He is asked why did you notice Botha only? And is ready with a reply,—"I paid particular attention to Botha, because I know him to be a man of peace, and was surprised to see him." You will remember that in another portion of his evidence he has sworn that he had seen Botha at Uithaalder's camp; that at the rebel camp, in the midst of the rebels, Botha had declared he was one of them. "I too am in the work, my sons are in the work." What now becomes of his reason for noticing Botha—his surprise because he was a peace man? From what he alleged he had seen at Uithaalder's camp, he must have expected to have seen Botha there; he could not have been surprised. It is, indeed, necessary, gentlemen, that liars should have good memories. This witness, too, Arend April, seems to understand the trade. While a prisoner at Fort Hare he was called twice by friends who were tried for rebellion, to prove that, while it was alleged they had been engaged in the pillage of a farmer's house, they were with him peaceably at the Blinkwater. The court-martial disbelieved him; they considered him guilty of perjury on both occasions, and yet you are called on to believe him here. Piet Bantam, the third of the men who had seen Botha at the Balfour fight, told you a pretty story about his going out to seek a horse which had strayed the evening before, but which turns out to be false, for he had been sent by Lotz to turn the Kafir

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cattle early that morning, lest, I suppose, they should fall into General Somerset's hands, and he, too, being near Fort Armstrong, and not at Balfour at all, sees Botha coming and going between Philipton and Balfour, though he could see nothing of the fight itself, the ridge being between. Gentlemen, look at the map, and convince yourselves of the impossibility of this. These are the three men who pretend actually to have seen the prisoner, either at or going to the Balfour fight; and upon this unconfirmed convict evidence, untrustworthy in itself, even if it had come from untainted men, I implore you to place no reliance. Hans Groepe speaks of nothing except what he heard, or professes to have heard, from Botha respecting the Balfour fight and the yellow horse, at the time Botha enumerated his exploits to those on whom I have already commented. He is in the same position exactly as Van Beulen, Andries Jansen, and Marthinus Groepe, who are brought hither from Bain's Kloof, not to tell what they profess to have seen, but what they profess to have heard. Gentlemen, in stating what they have heard, how liable are the most honest people to mistake, wtth respect to particular evidence. You, gentlemen of the jury, would not be able consistently to state what has been said by certain witnesses in that box, despite your unremitting attention. On the extreme wariness with which it is incumbent that juries should look on evidence of this nature, I shall read to you the opinion of one of the most eminent criminal jurists of England. The book I hold in my hand contains Sir Michael Foster's Discourses on Crown Law. He was one of the Special Commission for the trial of rebels of 1745, and with the experience he had gained in these trials, he wrote his celebrated discousses "Of High Treason." I quote from the 3rd chapter of this discourse. The learned author has just remarked that there had been considerable, doubt respecting the sufficiency of such evidence at all, and he proceeds, after stating that it was now admissible:—"All "I insist on is that the rule should never be carried further "than the case warranteth, never further than to a confession "made during the solemnity of an examination before a magis-"trate or person having authority to take it, when the party "may be presumed to be on his guard, and apprised of the "danger he standeth in?" The rule has been extended, gentlemen, but yet the reasoning holds. Now, listen to this eminent judge's weighty remarks:—"For hasty confessions, "made to persons having no authority to examine, are the "weakest and most suspicious of all evidence. Proof may be "too easily procured, words are often misreported, whether "through ignorance, inattention or malice, it mattereth not to "the defendant, he is equally affected in either case; and they "are extremely liable to misconstruction. And withal, this "evidence is not, in the ordinary course of things, to be dis-"proved by that sort of negative evidence, by which the proof "of plain facts may be, and often is, confronted." Weighty words, gentlemen, and from one who in the position held by him was the very best authority to remark on what is likely to be the probability of the truth of a confession, especially in cases of high treason. With this quotation from this eminent criminal jurist, showing the caution requisite in taking state-

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ments and confessions even from untainted witnesses, how much greater must be your caution with respect to these statements, these alleged confessions, unsupported by any other evidence, from this contaminated source? Well, we have these statements, of wonderful unanimity as far as the first four convicts are concerned, who came together: not quite the same story from the three last,—and indeed from one of them a very different tale. Now, I ask you, as reasonable men, what is more probable than that what Botha really said was nothing more than that he had been arrested on account of a yellow-horse, never having stated that he was in the Balfour fight at all, for he had not been there. These confessions, so called, misreported,—not here by honest but by dishonest men for a purpose,—have now, after the lapse of a year, been exaggerated into their present dimensions. Indeed, what the three last arrivals from Bain's Kloof say on this matter amounts not at all to any statement by Botha that he had been in the fight of Balfour; and none of these three knew anything of what the first four said occurred at the same time,—the preposterous confession that he had been at the Lushington fight, the charge of the sixth count,—where it is proved he was not, nor could have been, by the most ample testimony. It is now my duty, having gone through the evidence of the prosecution, to tell you what we have proved on the fourth count. The veracious testimony of Mr. John Green—the sole untainted witness, forsooth—on this count, that he had made a report of what he now swears that he saw on the Balfour morning, is contradicted, not only by Mr. Wienand, but is further contradicted by Isaac Izaks, whose testimony, given honestly and clearly, is that on the morning of the Balfour fight, shortly after daylight, he saw Botha ride unarmed in the direction of Readsdale,—not armed in the direction of Balfour, quite the opposite direction,—and that on the evening before he had had some conversation at Botha's house, when he was told that Botha on the next morning intended to ride towards Readsdale. Mr. John Green did not then make the report he now swears to to Mr. Wienand,—because it was unnecessary,—the fourth count had yet no existence. Botha is proved to have been at Philipton again, as usual, between 10 and 11 o'clock. Returning from Readsdale he had gone to the Spieon Kop,—attracted, as many had been besides, by the firing,—where Brander saw him and Platjes. He had no bandelier on; there was a gun, but whether it belonged to Platjes or Botha, Brander did not know; but Botha was quietly lighting his pipe and smoking. Brander saw a yellow horse, and asked Platjes, in Botha's presence, where he had got that ugly brute,—when he was told that he had got it in the thorn trees below, where the Kafirs, in retreat, were driving their cattle. The Kafirs in flight,—what was more natural than that a horse running loose, overridden and fagged, should be taken possession of by the first man who happened to be near? Brander got back to Philipton, and shortly after sees Botha at Philipton also. In his opening address, you will remember that my learned friend hoped to prove that, after the morning of the Balfour fight, Botha had never shown himself at Philipton,—and if this had been established, he might indeed make much of the

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fact,—and insist that his absence from Philipton, his usual place of abode, was a most strong presumption, that on that morning he had resolved to cast his lot with the rebels. If, indeed, the Attorney-General had been able to uphold the position of his opening, that Botha had staid away, there would have been, at least, presumptive evidence in confirmation of the convicts. But it has been proved, beyond a doubt, that he was at Philipton after his return from Spieon Kop, during the whole day,—that he was at Philipton on the Sunday,—on the Monday, throughout the day,—that on the Tuesday morning he was there, to within a couple of hours of the arrival of Gen. Somerset with the Fingoes. The most respectable witnesses, Commandant Fourie, Hatta, Magerman, Jan Fourie, prove this,—and it is so clearly established that his former position is entirely abandoned by my learned friend. It certainly is the most extravagant supposition,—it would have been the extreme of improbability,—that if Botha had been at the Balfour fight, he would have returned, after the rebels' defeat, quietly, calmly, carelessly as usual, to Philipton. His absence when the General arrived at Philipton, which has been thoroughly explained in the evidence, and which I shall shortly bring to your notice, was the sole cause of suspicion against him. He was thereupon imprisoned,—he must have cleared himself or he would have been punished even as the other rebels,—and you would not now have to try him on charges which were honestly thought to have been dismissed for ever. If Botha had on that day made up his mind to cast off the appearance even of loyalty and join the rebels, Philipton would not have been his home,—old Fourie his chosen companion. The improbability is such that if my learned friend had brought far less suspicious evidence than that dug from the sink of Bain's Kloof,—a jury would yet exercise great caution before giving them any credence. But, indeed, he is accounted for nearly the whole morning,—he is accounted for on his way to Readsdale,—he is accounted for at Philipton from 10 o'clock,—and for at least an hour before that time he is accounted for by Brander. He must have been ubiquitous to have been at Balfour for some hours, as the convicts swear. And, gentlemen, you must remember this, in reference to the present charge,—that this, the cardinal charge, is one of those which came forth at the last moment, and that the evidence with which we have come to meet the indictment, is the evidence wherewith we were prepared on the original indictment alone. Had there been time, how much more evidence may have been obtained,—yet more to contradict these convicts and Mr. John Green. I know I might have postponed the cause until the next sessions, being so taken by surprise; but blinded as the old man is by his long confinement, dying a slow death within the prison walls, I yielded to his prayer, and with the evidence solely meant for the old indictment, I have met even the new and startling charges. Better that he should be tried, than that he should be dead in prison before his trial could come on. Fortunately, it had been thought, although these new charges were not dreamt of even by the Attorney-General, that it would be well to have the persons who were most with him about the time, when his absence excited some suspicion; and thus providentially we

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have been able to meet even these new accusations. My learned friend has intimately connected the fourth charge with the fifth, which was the fourth of the original indictment. With respect to Vriester, you will bear in mind what you have already heard of the unconfirmed testimony of accomplices,—that confirmation in material points is required. Vriester, the rebel of many fights, says that he saw Botha out at Van Beulen's Hoek on Sunday,—the Balfour fight having occurred on Saturday,—assisting his son Stoffel to a horse,—this being made out by my learned friend to be the identical yellow horse, which, on the credit of his convict witnesses, he tells you Botha had taken from the farmers in the Balfour battle. And Botha's statement, whether or not mistranslated and misconceived,—and you have had ample evidence of mistranslation and misconception before you,—is brought in to confirm this. Now, if you attend to this statement, it cannot have reference to the day after the Balfour fight,—for he tells you in that statement, that Vriester may have seen him while he was shut out from Philipton by the Fingoes. This was on the 25th, not on the 23rd. On the Sunday, the 23rd, he is proved to be at Philipton, and until the 25th. But Vriester makes it the day after Balfour positively. And my learned friend tries to connect him with Lotz, his convict witness, who in my learned friend's mistaken view of his evidence, was made to have said that Botha and his son Stoffel had ridden out from Philipton after he, Lotz, had arrived there on the 22nd; both riding on one horse! This hypothesis was necessary to meet Vriester's statement, that when Botha had given his son the horse he walked home on foot. Gentlemen, not only the convict Lotz would have seen the strange sight of two men on one horse, the whole place would have admired the spectacle; even Mr. John Green would have left his snug retreat under the feather bed or in the loft to enjoy the view. But, however, Lotz not having said this, it is impossible to connect these very respectable witnesses one with the other; if Botha went with his son, each on horseback, as was said by Lotz, he would not have returned on foot,—the one tainted witness does not even confirm the other. All that can be taken by you to be proved,—Botha's own statement being taken as much as my learned friend pleases against him,—you have but this: that on the 25th, being shut out by Fingoes from Philipton, having in fact left Philipton when the Fingoes came, Botha was in the direction of Van Beulen's Hoek. And as the whole of his statement must be taken for you to form your judgment, you must remember that he denies positively,—although he may on the 25th, not on the 23rd, have been near Van Beulen's Hoek,—the fact of his son Stoffel being there, or that he gave him a horse. Weak as this count is, it is the weakest of all;—that a father should be brought up for high treason,—not for being engaged in arms against the Queen,—not for injuring her liege subjects,—but for giving his son, whom he had sought to bring to his allegiance, and whom he had brought to swear the oath before the magistrate,—a horse! My learned friend was weak, indeed, when he remarked that it could not have been paternal feeling, it must have been sympathy for rebellion,—for the same father, who before the war had delivered up to justice

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a son who had been guilty of theft, now screened a son who had been engaged in rebellion! What more incorrect parallel could have been drawn? A man has no paternal feeling because he deems that one son, whose conduct he deplores, and whose conduct may be ameliorated by punishment, should suffer a few months' imprisonment, while, at the same time, he would not have another son condemned to death! All that this count, resting on the unsupported testimony of this rebel, proves to you again, gentlemen, what was proved by the appearance of the idiot, Jacob Nieuwveldt, in this court, that no stone has been left unturned to find evidence. Strange, that after a year's search, the only important evidence is discovered at the convict station. This charge, even if true, could be viewed only with feelings of reprobation; but, without now entering on the fact that it has been proved to you, again and again, that on that Sunday Botha was throughout the day at Philipton, so that it is positively false to say that he was at Van Beulen's Hoek on that day, no evidence to which you can attach credit has been produced to you at all. Gentlemen, I now come to the sixth count, which charges the prisoner with having been engaged in action against Her Majesty's subjects at Lushington. This count depends entirely on evidence of the nature so severely commented on by Judge Foster. No one pretends to have seen him at Lushington; the whole is based on statements and admissions, alleged to have been made by the prisoner, but which, even from honest witnesses, could not be received except with extreme caution. Honest witnesses, the *probi ac legales homines*, the true and lawful men, who, untainted, could not only give evidence, but be entitled to sit as jurors, are not to be depended on in evidence of this nature, at least, are to be most warily watched. But convicts for life are produced,—this evidence of the most suspicious nature coming from the most suspicious quarter is brought forward, and you are seriously called on to convict on such testimony for high treason! Even if these men, (only the four first arrivals, the last three, though present at the time this public statement of Botha was made, know nothing of it,) could for an instant be deemed honest and untainted, the evidence which has been produced on the defence has shown you how just are the remarks I read concerning the suspicious nature of this testimony. It is, indeed, fortunate, that able as we knew we were to account for Botha's conduct, wherever it seemed any suspicion rested, the witness, Jan Matroos, with whom he was during nearly the whole period between his departure from Philipton on the Fingoes' approach, was summoned, although not a direct witness on any of the counts of the original indictment. His evidence shows how mistaken, how utterly false, the statements of these four convicts must be. Matroos proves to you most clearly, that being at Philipton on the day of General Somerset's arrival at that place, the Tuesday,—fearing that in the confusion friend and foe might have been confounded, and fearing, especially, that from which the most loyal were not free, the savage excesses of the Fingoes,—he went out of the way on General Somerset's arrival, and remained in the neighbourhood. On the evening of the day on which the General came,—on the evening of Tuesday, the 25th, he

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being then at Spioen Kop,—Andries Botha,—who had sent a message to General Somerset, delivered by Commandant Fourie, that if he came to Philipton with the Fingoes and Fort Beaufort burghers who had threatened his life, joined him and Isaac Arends, who was with him,—that on the next day, the Wednesday, they were together the whole of the day; the same on the Thursday, and on the Friday; being all this while generally between Philipton and Eland's Post, Andries Hatta, who had gone with the General to Eland's Post, having driven the cattle to pasture from the post, met them near a place called Kop en Pootjes, near the post, and urged Botha and himself to come in: that Botha, having ascertained from Hatta that, on that very day the Fingoes and Fort Beaufort people would leave Eland's Post with the General, went to Eland's Post on the day after, the Saturday, the Fingoes and burghers being then away, and delivered himself up to Captain Fisher, the commandant. The Lushington skirmish, to which the 6th count refers, took place on the 27th. It has been proved that on that day, and during the whole of that day, he was with Matroos. Not only on that day is his position proved, but for every day, from the commencement of his absence,—the 26th, the 27th, the 28th,—until the 1st, when he goes to Captain Fisher. What, then, is more clear than that the alleged confession, on which the sixth count is founded, is a most false and malicious fabrication. It is proved, beyond the shadow of a doubt, that Botha was not, nor could have been, in the skirmish at Lushington on that day. I should not waste your time and patience more on this count, if it were not my duty to urge you to look—with the light you now have of the truth of convict evidence—at the charge of Botha's presence at Balfour, resting also solely on this convict evidence,—which, utterly false here, you must conclude to have been false also there. Disbelieving the convict evidence on the sixth count, how can you be called on to credit it on the fourth,—which is but a portion of the same tale? Having gone through all the specific charges, it now becomes my duty, gentlemen, to remark upon the general conduct of Botha throughout this unhappy rebellion. He was more than once at the rebels' camp: this is true. He went there deploring the unhappy excesses which were taking place, and which were casting desolation and ruin around;—it is proved to you, that, with Mr. Read,—with the loyal old Commandant Fourie,—with Hatta,—he did go from time to time to dissuade these wretched rebels from their miserable course. It is proved that up to the time of the magistrate's leaving Philipton for Fort Beaufort, whither he accompanied him as one of the escort, and was but ill requited, he was constantly with the magistrate. My learned friend, the Attorney-General, has dwelt on the circumstances that his field-cornetcy had fallen off,—that his sons had joined the disloyal Uithaalder. Unhappily, this was true,—and sorrowing that it was so, Botha yet resolved, old as he was, to do what was in his power for the safety of the Government, and attached himself to the magistrate's person, with grief reporting the defection of his sons and people. Mr. Wienand, who had better opportunities of judging of Botha at that time than you or the court now, considered, and has publicly

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stated, that up to the date when he left the settlement, Botha was a most efficient and loyal man, and had ever done his duty. His letter to the *Graham's Town Journal* shows this,—shows, that having constant opportunities of seeing him and inquiring into his conduct daily, he had come to the conclusion that he was a most efficient and faithful servant of the crown. I read a portion of this letter, written immediately after the conduct of the Fort Beaufort populace had so nearly led to bloodshed,—conduct sufficiently bad to make even loyalists rebel. He says,—"My escort was composed of persons who had fled to Philipton and Eland's Post (nine having been furnished me from Fort Armstrong), and as far as I can judge, from their faithfulness to me, are true and loyal subjects of Her Majesty. * * * Mr. Thomson's son, Rev. James Read, jun., Field-cornet Cobus Fourie, his three sons, David Scheepers, and several other stanch men formed my escort. If they are rebels, then I must be one also. Their treatment at Fort Beaufort I shall leave to others to describe; all I shall say is, that it was such as to add to the ranks of the enemy men, who, by their actions, have hitherto proved their loyalty. I tried, and, I hope, succeeded, in allaying the feelings excited in the minds of these unfortunate men,—who thought they were showing me a mark of respect, and manifesting their loyalty to Government, in bringing me through the danger which surrounded them on every side; and to the last moment of my life I shall, with gratitude, acknowledge their service, not only on this occasion, but also on various other occasions. Andries Botha has been too much mixed up with his sons, who have, for a length of time, shown that they cared nothing about him,—for, since his marriage to his present wife, they treated him not as a father, but as an alien to his family. Let his conduct be inquired into, and he will be able to show where he was, and what service he was doing. When he was accused as being with the enemy, he was chiefly with me; and from the first moment of the defection of his field-cornetcy, and of his sons, kept himself as close to me as he possibly could. I shall say no more. Time will show his real character. As far as he acted under me, I found him a most deserving officer." You will remember, gentlemen, the date of the magistrate's departure from Philipton, the 29th January. Thus, after the affair of the seven horses, which the Fingoes falsely swore they reported to Mr. Wienand as Botha's act,—after the affair of the three horses, with which it is quite clear Botha's name was not associated at all by those nearest the spot,—after the defection of his field-cornetcy,—after Uithaalder's demonstration at Fort Armstrong, on the 22nd January,—Mr. Wienand, being then present there, and certain to know if Botha had indeed shown any disloyal feeling on that day, as now suddenly discovered,—at the very time when the magistrate could best judge of Botha's conduct,—he vouches for his loyalty and character from minute observation and accurate personal knowledge. All the circumstantial matter, then, occurring before this date, and with which my learned friend would prop up his charges, falls to the ground. Again Mr. Wienand contradicts John Green with his circum-

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stances of suspicion and vague hints of communication with traitors on Botha's part,—"When he was said to have been with the rebels, he was chiefly with me." The evidence of Mr. Bell, too, which, perfectly nugatory and irrelevant to the case as it is,—is brought forward to cast imputations on Botha before the 23rd of January, when Mr. Bell left Fort Armstrong, is entirely answered by Mr. Wienand's letter. If Mr. Bell had these suspicions and certainties, why did he not, as was his bounden duty, communicate them to the magistrate? But, indeed, why Mr. Bell has been brought here at all, I cannot divine, unless it be that all who in the Eastern Province imagine they have something to say in the matter, must be heard. But the circumstances of suspicion on which my learned friend expended so much eloquence were chiefly due to Mr. John Green. The substance of this man's malicious communications to the newspapers has been, that there were not men enough condemned to death for him,—that Botha must be convicted, and he should do the deed. Knowing his malice, and that his malicious feeling supplied his facts, I put the question to him,—whether he was not disgusted with the court-martial for condemning so few. No, said he, with solemn tone, "I have too much respect for courts of justice to make such a remark." Falsehood again; hear, gentlemen, a portion of this person's communication to the *Graham's Town Journal*, of the 24th March, 1851. Speaking in praise of himself,—in depreciation of others of course, he says,—"All this, and more,—these gentlemen knew,—but perhaps they have forgotten it, which I have not, nor can I. They have seen many of these guilty men brought forward before the mock court, at Fort Hare, as witnesses in favour of the prisoner!" The mock court at Fort Hare! This is the respect this man boasts for courts of justice, when they do not carry out his bloodthirsty views,—when they temper mercy with justice. Here is the letter of this man, in which, not communicating with the Attorney-General, but, in preference, with a party newspaper, he holds forth his qualifications as witness, and impeaches the honesty of every white man in the Kat River but himself:—"I was daily attending the court martial, and I do declare that if the other white men who came from Philipton with me had acted towards their Queen and country as I have done, then nine out of every ten that came out of Kat River would have been proved guilty of the same crime as those who were sent away; but no white man would remember anything." All the respectable inhabitants of Kat River are branded actually as traitors by this man, because they will not, like him, torture their invention for facts,—because they delight not so much in the blood of their fellow creatures as, by this letter, he seems to boast that he does. Certainly, the newspaper was a better vehicle for his malice than an honest letter to the Attorney-General, stating actually what he did know in reference to this case. He has stated, indeed, that he communicated to Mr. Stringfellow, what he wrote to the papers;—but when one magistrate has proved him perjured, you will pause before, on the allegations of this man, you charge another magistrate with dereliction of duty. But what were Mr. John Green's true and honest views at the time when, as he has

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now told you, he saw so many suspicious circumstances in Botha's conduct, convincing him that Botha had part in the rebellion. Honest and true views, I have said,—as if this were possible. But yes, gentlemen, it was possible for him to express his honest views when he thought Botha's protection might be of use,—though now that Botha is a prisoner, and to be crushed, he must needs explain away what before with his own hand he subscribed. Why was the requisition signed by the parties who prayed the magistrate to appoint Botha assistant commandant on the 16th January? Because they knew his loyalty,—because they had confidence in his fidelity,—although his sons had revolted and his field-cornetcy was full of rebellion. Why did Mr. John Green sign this memorial? For exactly the same reason as the others; but now, with pitiful meanness, he would have you credit, not that he signed it from confidence in Botha, but from policy, because he thought him a rebel! Would Mr. John Green have you believe this even of him, after his boasted and immaculate loyalty,—that when he thought this man a traitor and a rebel, he deliberately signed a document to deceive the magistrate into granting power and authority to this traitor? If John Green is believed,—if, knowing that Botha was a traitor, and the chief of traitors, he sought to place it in this traitor's power the more easily to destroy loyal men, by giving him authority,—he deliberately told the magistrate that this man whom he knew to be disloyal, was the most loyal of all, and entitled to the highest confidence,—he ought to be at that dock for aiding and abetting this treason. If, again, knowing on the day of the Balfour fight that Botha had gone to that place armed, he retained this secret to himself for a twelvemonth,—as he has done, if the statement is true,—he ought to be at that dock for misprision of treason; for he knew of the act, and as a loyal man should have communicated it to the authorities. Gentlemen, I will now call your attention to Botha's conduct on the 22nd January, the day of Uithaalder's demonstration. At the time it was first brought forward in this case, I thought it a substantive act of treason, which ought to have been separately charged. This was overruled by the court,—and to this ruling I submit. But my learned friend has dwelt on it so much, as really a separate charge, that, although part of the general conduct only, I shall pause to answer it somewhat minutely. Again, the convict Hermanus Lotz, who in this case would implicate the brave old Fourie at the same time with Botha, is the chief authority for the charge of disloyal conduct on that day against Botha. His companions from Bain's kloof support him. But this has been proved to you, gentlemen,—by the Rev. Mr. Read, by Commandant Fourie, and Commandant Groepe,—that Botha was quite ready and prepared, not, as Lotz falsely states, to aid the rebels,—but to shed his blood for the English; and indeed, as stated by Fourie, both he and Botha thought the Commandant ought to have given orders to fire. Upon this question we cannot enter; I do not profess to be a military authority, as the hero of the feather bed seems to consider himself to be; but it would seem that Groepe exercised a sound discretion,—probably suspecting that Lotz and others who subsequently turned rebels

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would not be stanch,—in not giving orders, which would have placed the lives of all the English in the greatest jeopardy. By what was done their lives at least were saved, and some of their property was recovered. Need I say more of the assertions of Mr. John Green,—the suspicions of Mr. Bell, on which—the substantive charges failing—you are called to convict this man? Shall I say more of the visits to the rebel camp? Botha is proved certainly to have visited the rebel camp, when others possibly were shrinking from their responsibility. Botha did go with other loyalists specially chosen for the purpose, as the best men who could be selected, to seek to win back the misguided people to their allegiance—to stay the curse of rebellion. He was there on public occasions; and while you have the convict evidence—now again first discovered—of Piet Bantam, of Andries Jansen, of Arend April, that he did not do his duty, you have the clear, honest, untainted testimony of the Rev. Mr. Read, of the loyalists, Fourie and Hatta, and others, that he did do his duty—that he was most earnest,—and this not an opinion of theirs of to-day, but embodied in a report to the General immediately after the very date. Remember, that even the constant inmate of the rebel camp, the convict Arend April, only speaks to three occasions in all;—these were the three;—and for fulfilling his duty to the Government and his Queen on these three occasions, he is now arraigned as a rebel on rebel evidence. But, after all, is it not idle, the excess of weakness, for my learned friend to dwell on these exhibitions of evil tendencies, all before the 29th January, when he escorted the magistrate to Fort Beaufort? If these things were true, Mr. Wienand, the magistrate, would have known them, and not only Mr. John Green and men of his stamp. But the magistrate, the man most competent to judge, having kept a cautious eye on Botha because of the defection of his field-cornetcy, came to the conclusion in his own mind that what Mr. John Green, and men of his stamp, were beginning to assert about Botha, when the latter's protection was no more needed, was false; and in his letter to the *Graham's Town Journal*, he says virtually, "I know him better than you,—I know you are attempting all in your power to ruin an innocent man; your malice is apparent, but your statements are false. While, seeing nothing but with the eye of your malicious suspicions, you assert that Botha was with the rebels, he was doing duty and with me." This from the magistrate at the time is a sufficient answer to the expressions on which the Attorney-General now rests his remarks. What, then, is the history of this man's movements? On the 24th January, disgusted with the proceedings at Fort Armstrong, he retires to Philipton, where are the magistrate and Commandant Fourie. He is there daily until the 29th, when he accompanies the magistrate to Fort Beaufort,—and, doing this loyal duty, is placed in danger of his life from prejudiced burghers and savage Fingoes. He continues to reside at Philipton, and is there daily; had he been away for a single day he must have been missed by Fourie and Hatta, who saw him, and were in the habit of associating with him daily. He is at Philipton, until the morning of the arrival of General Somerset with the very men who were so prejudiced against him,

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that it would have been, indeed, madness in him to have deemed his life safe in the hour of their triumph. For the absence of these three days, you have, in fact, although not in form, been called on to try the prisoner as if this absence was in itself an act of rebellion. This has been proved to you,—that, when engaged in his loyal duty of conveying the magistrate to Fort Beaufort, Botha was a marked man. It was not unnatural,—to some degree excusable,—that in their excitement and indignation the Fort Beaufort people had confounded the father with his sons,—one of these very sons being then in gaol at that place; but if excusable, it was most unfortunate. He has been accused, as if it were an accusation, of having spoken indignantly of this treatment after his return to Philipton. It had been most unintelligible conduct on his part if he had not been indignant. He will not have hesitated to say of those who had maltreated him what their conduct merited. His terms of indignation could not have been stronger than those of Mr. Wienand,—who considered conduct of that kind might have damped the loyalty of old Fourie, who for 40 years had served his country loyally. Conduct, which required that, for the safety of the escort, Colonel Sutton himself should take command of a party of military to protect them, and should hurry those who had just preserved the magistrate from danger, out of Fort Beaufort,—could not but awaken feelings of indignation in those who suffered from the violence. It is in evidence that from the time that it had been understood that the General would come to Philipton, long before the affair at Balfour,—Botha had said he would not be at Philipton if the General came with the burghers and with Fingoes, whom he could not control; if he came with military, whom he could control, he would be there. It is in evidence that he sent this message to the General by old Fourie,—that up to the very moment of the General's arrival he was at Philipton,—that when the Fort Beaufort people and Fingoes came, he left Philipton,—that immediately after they had left Eland's Post, he delivered himself up at Eland's Post. He sent word to the General that he would not await the coming of the Fingoes, because he knew their hostility,—their lawlessness,—that General Somerset could not control that savage race in the hour of their triumphant exultation. Was he right in this? He had been on a loyal errand at the large civilized place, Fort Beaufort,—and there Colonel Sutton could not control these barbarians; would General Somerset be better able to control them in this little village? It is proved that on the arrival of the Fingoes they rushed to Botha's hut, crying, where is Botha,—and had he been there, in this excitement, it would have been his death! And because he absented himself,—death is to be his doom now! But, said my learned friend, fear could not enter the breast of the bravest man of the Kat River,—his absence was caused by a consciousness of guilt! The bravest man in the world might fear assassination. A man may be brave and ready to fight to the death, to hold his head before the cannon's mouth in the performance of his duty, and yet it is not unnatural that this same man should avoid assassination from an uncontrolled savage. For my part, if following my learned friend, I should enter into the workings of this man's mind at the time, I

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should deem it not unnatural that his feelings might be two-fold, that somewhat of fear might have been mingled with much indignation; and that, with an obstinacy which only his thorough knowledge of his own unimpeachable loyalty could have permitted him to exhibit,—he determined to prove to the General the disgust with which he regarded the conduct of the Fingoes towards himself at Fort Beaufort, and how deeply he felt the behaviour of the Fort Beaufort citizens themselves. This may have been weakness on Botha's part,—it may have been folly; yet it was not unnatural,—it was not rebellion. The Fingoes came on firing, excited, uncontrolled,—and Botha went out of the way; and my learned friend seriously asks, "Did not Botha know that by General Somerset's order of the 7th February, by which his friend Fourie was appointed special commandant, all loyalists were ordered to retire to certain places, of which Philipton was one; and those not doing so would be treated as enemies?" Aye, Botha did know this, and did live at Philipton, and was at Philipton until the 25th February. This was not an order issued immediately before Botha's absence; this was not an order sent specifically to him after his messages to the General, to which no reply was given at all,—this was an order honestly obeyed by Botha, and which has no reference at all to Botha's particular absence of these three days. But, says my learned friend, he placed himself in danger. True, and for this he suffered; he was for this absence arrested, and placed in confinement at Fort Hare. But, on his explanation of his absence and its causes,—and undoubtedly after those whose duty it was had satisfied themselves of the truth of his explanation,—he was released. None, then, was found to assert that, because an old man, in recent danger of his life, whether from fear or indignation, or both, remained away from this danger,—that, therefore, not acting in obedience to an order promulgated,—not immediately but long before this absence,—was this old man guilty of rebellion. Colonel Sutton and Capt. Fisher knew of this absence; but yet it was not by them deemed an act of rebellion. General Somerset, the author of this very order, knew of this absence; and yet it was not by him considered an act of rebellion. If, *primâ facie*, it had been considered suspicious, it has been amply explained. If by absence, then, those who best could judge had concluded that an act of rebellion had been committed, the prisoner's doom would have been sealed a twelvemonth since. I shall not trouble you with many more observations, gentlemen; but I would have you examine the gross improbabilities, the impossibilities, which you are to credit if you are to believe the case for the prosecution. You are to believe—for this has been amply proved—that at the time when rebellion was most triumphant, Botha did his duty as an honest and loyal subject;—that when the authorities were paralyzed by the sudden outbreak, when no military could be spared to render assistance to the loyalists in the settlement, this man was the most efficient, the most loyal in the magistrate's estimation, the most competent to take the command against the rebels in the opinion of many, even of Mr. John Green,—that he does his duty honestly and loyally as man could, and in a period of utmost danger exposes his own life, in order, at least, that—amid the disgraceful scenes which were

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being enacted, and which he and other loyalists, though they could not stem them, deplored,—the safety of the Queen's magistrate should not be compromised. While the rebels are triumphant, and in their own mad notions able to wrest the land from the government,—with the ministers of the gospel, and other good and true men—he is most earnest to dissuade them from their wickedness and folly:—during all this time he does not join them. But when their cause seemed prostrate, —when General Somerset came sweeping the whole of the Kat River with a force which could not be opposed, when the doom of rebellion seemed certain,—when Uithaalder and his men were obliged to escape into the mountains,—then would my learned friend have you believe,—then, at their moment of despair—never having joined the rebels before—this wary, cautious old man chose the opportunity of linking his fate to theirs. When all traitors were panic stricken, were intimidated at a prospect of a speedy termination of hostilities and their own destruction,—you are to believe that then first Botha went to join the rebels! Having then joined, and openly joined, the cause of rebellion, having at length taken up arms and been in two active engagements,—two days after the last of these alleged engagements, knowing that condign punishment would be visited on all that had taken up arms, knowing that personally he was obnoxious to many in authority,—he voluntarily, without constraint, without compulsion, delivered himself up at a military post; when, if indeed there were truth in the now invented tale that he had taken up arms, there would not have been a man who would not already have known the fact! Upon these improbabilities, supported by convict evidence, in many particulars proved forsworn, and which has been silent for a twelvemonth,—and by the Fingo charges, now utterly broken down and abandoned,—my learned friend has indeed wielded the great powers of his eloquence; and upon these improbabilities you are to credit that the man whose high character and loyal services you have heard from Sir Andries Stockenstrom,—who has received the same high character from Col. Sutton,—who was the most efficient officer of the Kat River before and even after these unhappy disturbances had broken out, despite his age and infirmities,—that this man is a traitor. Gentlemen, unhappy and fearful as have been the events of this dreadful rebellion throughout its several stages, if Botha had been indeed a traitor,—if, as undoubtedly from his high military reputation, these misguided wretches had wished, he had taken command of the rebels,—then, when there was an utter paralysation of all power,—in January and February, 1851, with the force at his disposal, there would not have been the puny attempts of an inexperienced Uithaalder; and it is awful to think to what yet more terrible devastation and horrors the unhappy frontier would have been exposed, were there, indeed, any evil intent in the mind of this man at the bar; for then his experience, the military ability of the matured soldier, would more than have supplied his want of physical strength. This, certainly, he would not have done,—he would not have sneaked to the battle of Balfour, and skulked back to Philipton; he would not for a couple of days have remained as a loyalist at Philipton, again to attend the skirmish at Lushington, with the object of going a

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day or two after that again to Eland's Post to challenge inquiry into his conduct! Gentlemen, these absurdities are most glaring in themselves, even were they not disproved. But they have been disproved most fully,—every count has been disproved. I feel confident that, leaving that bar a free man, Andries Botha will, for the short period he has yet to live, still bear the high character which his loyal services have gained him,—that the contaminated evidence which you have heard,—evidence of witnesses, who, after heaven and earth had been raked in vain, were brought hither from the hell of a convict station,—evidence of a nature, now for the first time admitted in a case of high treason,—will have no weight on your minds. I confidently leave the case in your hands. Thanking you, again, for the patience and attention which for so long a time you have cheerfully bestowed on this protracted trial in the exercise of your public duty,—I am happy to think that the close of that public duty will be the pleasing task to restore, unimpaired, to the prisoner at the bar of this court the high loyal character which he has maintained during a long series of years.

The Chief Justice said,—Gentlemen of the Jury,—this has been a case of no common labour, as to investigation, either as regards the principles involved, or the facts to which those principles apply. It has cost you much attention, and you will easily be aware of the anxiety it has caused to those who have to lead the case. I shall not lead the case in any preliminary observations. My object will be to show that the facts involve the crime charged. It is said, gentlemen, that this is the first trial that has occurred in this colony as to high treason; but what matters that? Justice knows no distinction with regard to the magnitude of the crime;—in the scale of justice the smallest crime is the same as the most heinous that can be charged under the criminal jurisdiction. You have only to be careful of one thing,—the ground of the declaration upon which you proceed;—with the condemnation you have nothing to do. You have only to have in concern that you are satisfied that the evidence has brought you to a certain conviction. Therefore, let us not think whether the charge is of high treason, murder, robbery, or any other denomination of crime,—it is sufficient that the prisoner is charged with a crime. The necessities of justice were as much involved in the most insignificant of the late criminal trials as in this public case; and although it may be true that it will create a great sensation in its result,—yet, gentlemen, you have now retired from the world and its concerns, to give your mind alone to the case as it has been laid in evidence before you; and it is now my duty to tell you, that the principles of evidence are the same in this crime of high treason as in any other offence known to the law. We cannot apply different principles, either as to the law or the practice, by which those facts are to be determined. Therefore this is an ordinary case; and I must be free to say, that although there is great complexity in the evidence, there seldom has been a case in which the jury had more clear direction as to the fact in proof, upon which their verdict must be found. The case, in fact, upon the

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evidence, involves only two great principles, the proof of the traitorous acts charged, and the sufficient proof of the defence upon the *alibi*. That is what we have to consider, and I have to endeavour—and endeavour only, I am afraid, it will be—to lead you as to the satisfactory pursuit of truth as to these facts. We will not forget, therefore, whether this trial is for high treason, for robbery, or for simple fraud. Some observations have occurred as to why this case has been brought here. Gentlemen, we have only to do with the fact that it has been brought here, and is before us. It has been suggested that it was brought here for the sake of the prisoner; but be that as it may, the evidence is the bond upon your conscience; and that bond is to be paid by the judgment you deliver. It is said, the case should have been brought sooner;—what have we to do with that? It has been brought in the regular course of judicature, and we must attend alone to that. This will not change the nature of the facts, nor will the mere efflux of time change the evidence by which the facts are supported. The history given by the public prosecutor of the times out of which this case arose, we have little to do with,—except as it may affect the evidence. It would be well if we could forget all about the Kat River Settlement, and the grievances of the Hottentots, or their reparation. We may hope, that the Kat River will be again in peace and security, and that the inhabitants will see the evil of the course they have pursued; but this is a matter with which this court has no more to do than the court of Westminster. Gentlemen, I would speak more strongly of the public feeling as it may have been affected by the newspapers. Perhaps it may be hard to say, that they should abstain from remarks calculated to interfere with the administration of public justice. They form part of that information which the public desire, and what they state they very likely state upon the best information they can obtain; but certainly when they come to arraign the entire proceedings of the court, or to influence its decisions, they commit a great public injury; and I have no hesitation in saying, that in reference to this case, that has been submitted to the public by the newspapers which would subject their conductors to be summoned to the bar to answer for contempt. I hope, however, that whatever influence they may have attempted to exercise they will be thrown entirely out of the case. We have in fact nothing to do with the conduct of the public prosecutor, high, honourable, and conscientious as he ever is in the discharge of his public duties. The counsel for the prisoner has not expressed himself dissatisfied with the public prosecutor. Again, gentlemen, there have been, during the proceedings of the trial, points taken up which were for the court alone to decide,—and which, having been decided, are now out of the case,—and I have now only to bring your attention to the simple facts as shown by the evidence. Well, then, gentlemen, what is your duty in this case? I have already pointed out to you that you are to determine, not upon general facts connected with the nature of the rebellion, but upon the particular facts brought before you in reference to the prisoner. Gentlemen, what is my duty? It is, now, to determine nothing,—what belonged to the case as regards

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the court's proceedure, I have already determined,—but to tell you what is the little law that applies to your determination, on the proof of the case. Every fact is within your conclusion; and it is my duty to point out any discrepancies in the evidence, and how far they shake the credit of the particular facts to which the discrepancies apply. Gentlemen, if I had to go through the facts after a period of retirement, I should be in a position more fully to discharge this duty; but I have not had time to arrange my notes, so as to be able to point out particularly the evidence of each witness in its relation to the several facts; and I had it in consideration whether I should not adjourn till to-morrow, to give me an opportunity of doing so, or trust to your observation, and leave you in a great degree to the statements and observation of the counsel. It is usual for the judge to read the notes of the evidence. I am quite prepared to do this; and unless I have an intimation from you that this is unnecessary I shall feel it my duty to read over those parts of the evidence which particularly apply to the facts called in question, either on the part of the prisoner or the crown. Then what is the charge? The charge is of high treason. What is high treason? The books all lay down, at great length, that high treason is an act committed with a hostile intention to injure or endanger the safety or independence of the state.—In the English phraseology it is called levying war against the Queen, and attempting to subvert and endanger the safety of the state. Many acts of high treason are charged against the prisoner in this indictment; and you are not to determine whether he has committed every act so charged. If your minds are fully satisfied that he has committed one act with an intention to subvert or endanger the safety of the state, it amounts to treason. Therefore, gentlemen, you perceive, this can in some degree reduce the labour you have in considering the indictment. It is true, every count must be so far substantiated by evidence applicable to it as will justify you in the general verdict of guilty; but it is also true that you may return a verdict upon any one count. Therefore, if there be facts that apply to all the six counts of the indictment, you will apply those facts to the whole bearing of the charges against the prisoner. Gentlemen, you have had a great deal of discussion with regard to the evidence of convicts; but mark you, gentlemen, what sort of convicts have you here? They are convicts for high treason,—a political offence. They are not robbers, or housebreakers; their crime does not necessarily involve want of regard for veracity, any more than it involves cruelty or want of honest principle. At least, all I mean to observe is, that they are political convicts. Convicts are admissible in cases where crimes would be unpunished if they were not allowed to give evidence, as you would admit accomplices. It is for the defence of public justice,—the defence of public safety. It would be monstrous to carry out the principle of excluding all hope of ever executing justice in cases where facts are within the knowledge of convicts or accomplices, because they may entertain hopes. If the accomplice speaks the truth, what matters it what influence he speaks under? True, you should watch him;—it is just that you should suspect him, and a matter of

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duty that you should see that his evidence is satisfactorily corroborated,—but if you are satisfied that the truth is spoken, you are not to reject it because of the condition of the witness. It is said that clean water cannot come out of a dirty fountain;—but that is begging the question that the water is dirty. There has never been a discussion of this question on the part of the prisoner's counsel. He, with his usual discretion and good sense, has argued against all convict evidence,—but it is the law that it shall be admissible. They are here, therefore, by the law of the land; and you will not think at all of their being convicts, unless you have reason to doubt their statements, although you scrupulously examine the evidence by which their statements are confirmed. The word "accomplices" has been generally used; but these men cannot be considered as accomplices. You are always to bear in mind that the resolution of the truth is the only object you have to regard. Gentlemen, that is your duty; and it is one that you have shown the greatest anxiety to perform with faithfulness. You may look upon these men as bankrupt in public character; and yet the bankrupt may come here under the eye of an intelligent jury, may give evidence worthy of perfect reliance. It is said that the prisoner was released from Fort Hare for want of evidence against him. What have you to do with that, if there is evidence against him now? But we do not know that there was not sufficient evidence at that time. Is it to be said, that because it may have happened that the gentlemen who sat there did not see enough into the circumstance of the case, therefore he is not to be tried here, if the facts are now fully disclosed? Something has been said, which I did not like to object to at the time, with regard to the inference of Col. Sutton. I presume this occurs in the statement I had to reject last night. We all know that Col. Sutton is an excellent officer, and we deplore that the colony is deprived of his services at this time when they are so much needed. But we cannot take his inferences or opinions; and his statement, which, at the time it was read, I did not know was not a regular deposition, must be entirely dismissed from the case. Gentlemen, I have said that we have only simple facts to deal with. The first count states that Andries Botha, &c., is guilty of the crime of high treason, in that, being a subject of our Lady the Queen, &c., did, upon or about the 24th of January, 1851, and at Fort Armstrong, &c., with force and arms, together with divers false traitors, armed and collected in a warlike manner, &c., levy and make war and rebellion against the Queen, &c., &c. Now, here, in the first place, it must be proved that there was a rebellion; secondly, that persons were traitorously assembled; and thirdly that the horses were taken; and if these facts are proved, then it is evident that war was traitorously levied,—these horses and arms being taken from men in the Queen's service. And further, it is charged that the prisoner did counsel, advise, and instigate the other traitors to put these men to death. Now, the witnesses produced in proof of this count are Fingoes; and it has been argued that Fingoes, like convicts, are to be utterly condemned as having such a hatred to the Hottentots that it is impossible to believe anything they say. If you think this, gentlemen, there is an end

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of the case, as regards this count. But will you reject them? Are these men to be exposed to every sort of enormity, and their statements to be wholly disbelieved? Will you say that there is no protection to the Fingoes who are exposing their lives daily in defence of the colony, and in staying the further progress of rebellion? This would foreclose a large class of Her Majesty's subjects from justice, and at once to state that, whatever be the nature of their complaints, they will be wholly rejected and unredressed. You will try their evidence, as that of any other witnesses, in reference to their admissibility. It has been argued strongly that the evidence is conflicting; but you will weigh the evidence of these three men as to transactions upon which they made themselves chargeable, and on which, if they speak falsely, they make themselves amenable to punishment. With regard to this first count, both the counsel have been very earnest in pointing out to you the bearings of the evidence. The three Fingoes, Nani, Byosi, and Klaas Mafee, are in the Alice levy. They are sent upon Government business for Government purposes,—that is to say, for public purposes, in which you, and I, and all, are concerned, in protecting our fellow-subjects in their homes and their lives; and are they not to be protected? This is a monstrous proposition. Nothing can be more direct than these men's evidence upon the transaction. They show that the prisoner was present when the act was done; and if it be shown that he assisted or instigated the perpetrators of that act, he is as guilty as the perpetrator himself. If you are satisfied that, in what was done, Botha was not opposing the perpetrators, but that he knew of it and consented to it, the law says that he is as guilty as if he has committed the violence himself, and had taken the horses and guns with his own hands. Gentlemen, what was there in their evidence to show that they had any previous determined hostility against Botha? There is nothing that I know of; you will see for yourselves. It does not appear that there had been any private transaction between these men. How are we to know, therefore, that they availed themselves of an opportunity to wreak their vengeance upon the class to which the prisoner belongs? Is it possible to find any part of the evidence where you can say, here is proof of combination. If you can, you will dismiss their evidence. Gentlemen, did these men expose themselves willingly on the 24th of January, 1851? We have it that some of them feared to go into the fort. Four went over first, and three followed. This was on the day after the English had left, and when violence had already been committed to their shops and property, and feelings were excited that soon were to burst into open rebellion; and these men have told us how they were then treated. One of them made a complaint to Groepe, naming Botha at the time. It is said they never went to the magistrate to complain. But think of the excitement of the time. This was not a theft, but an act of rebellion;—was it likely at that time to be thought a matter to take before the magistrate? That they should complain to their officers is natural. They had escaped with their lives, and it was scarcely to have been expected that they should go to Groepe; but that they should carry it further, was not to be expected. Disaffection, arms, were the order of the day; and to lodge civil

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complaint with the magistrate might well appear useless. You find that one of these men did make a complaint; but I doubt if my friend, Mr. Wienand, could afford redress. It was then the administration of rebellion, it was a cut with the traitor's sword, and only to be punished summarily by the hands of the government whose power had been assailed. It is said this is a disadvantage to the prisoner; but he has no right to complain;—he was amongst those who had taken the law into their own hands and used the sword of rebellion. It appears to me, therefore, that this will not weaken the evidence given by those men. Remarks have been made on both sides, with regard to the manner in which these men gave their evidence. It has been called by the prisoner's counsel flippancy; and it is said that the Fingo witnesses are garrulous and flippant, and the Hottentots slow, deliberate, and cautious. Gentlemen, it is for you to say what force ther e is in that observation. As I said before, the system of jury trial is most beneficial, because it brings the witness to the presence of the jury, who can observe his tone, manner, and countenance, while giving this evidence. It is therefore for you to say if there was anything in the manner of these men that leads you to doubt their evidence. Then, as regards the presence of Botha. Do you think that seven Fingoes could be brought into the public square and subjected to such violence, and that Botha could stand there as a mere automation, thinking it unnecessary to move a step to interfere in the matter? It may be said he thought they were too dangerous. That is for you to determine. He is an old field-cornet, acknowledged to possess influence, and he does not try to exert that influence on behalf of these men. It is for you to say whether his not intervening is evidence of his concurring in the act. This is a link of the evidence to show that he is a man who did assault and despoil these parties of their horses and accoutrements. It is in evidence also that he wanted them to be shot. Let me ask, do you believe that these men actually thought, at the time they complained to Groepe, that they were in danger of their lives? It was not alone the violence of the mob that alarmed them, but the command, that they be taken to the krantz and shot. But do you believe them? Gentlemen, I ask you why should you disbelieve them? There is no direct evidence on the part of the prisoner to exonerate him from the charge against him. The Rev. Mr. Thomson was present;—he has not been called. I presume that he could not give any information, that he thought just to produce on the part of the prisoner. How can you come to the conclusion that these three men raised that picture, that they were being forced towards the krantz to be shot, when they were rescued by the interference of one or two of the bystanders?—[His lordship then read the evidence of the three Fingoes, commenting minutely upon it, in the course of which, from exhaustion, he was compelled to adjourn the court.]

EIGHTH DAY.—THURSDAY, MAY 20, 1852.

The Chief Justice, in proceeding with his address to the jury, said,—Gentlemen, I need not say how much concerned

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I was that an exhaustion of strength should have prevented me from completing the duty in which I was engaged. That exhaustion was, as you are aware, most unwillingly yielded to; and I should, perhaps, have postponed yet further the remarks I had so imperfectly commenced. I would, however, proceed to state that even the prisoner's counsel did not take any legal objection, and I have told you that if the facts are proved there is no question of law, at all, which would make it a matter of doubt that, if the facts charged against him are proved, the prisoner has committed the crime of high treason, in levying war against the Queen and endeavouring to disturb and overturn the government. Therefore you have nothing but matter of facts to consider; but there are such a multiplicity of facts in the case that the mind becomes bewildered in the consideration of them. It has been observed to you, again and again, that you must consider whether the variance between the Fingo witnesses is such a variance as affects their general credibility;—such a variance, for example, as whether letters are taken from the haversack or the pocket,—how far does this go, considering the interval of time which has taken place? It is for you to think that a man might make a particular statement before a magistrate, and long afterwards come and state the same facts, in some particulars different, but still essentially correct. This is a question for you, gentlemen, and it applies very strongly as regards these witnesses. Since I have had some possession of my memory during the night, it occurred to me that the counsel for the prisoner mixed up the two first counts; and it will perhaps be difficult for you to make a distinction between them. It may be true, as in general report, that there is an odium existing between the Hottentots and Fingoes, as masses of men; but the same observation cannot be held to apply to particular individuals, unless upon proof of the fact. It is for you to say whether such a feeling has been shown in respect of these particular Fingoes brought before you, as to enable you to say, that there is a disposition to wreak vengeance on the prisoner at the bar. You must find some feeling of hatred, or some feeling of interest, such as would lead them to adopt a conduct which outrages all truth. But there is no evidence of previous ill-will between these parties. Botha had borne the highest character; and it is for you to watch, to look about you, and see where you find this personal odium or direct ill-will; and if you do not find it in the circumstances and individuals, you will not find it in the general class feeling, true and strong as the fact may be. I may make a remark on some small matters upon which I have already observed. The main point would seem to be this,—not whether the horses were taken with violence, but whether Botha ordered the horses to be taken, with the view and intention of overthrowing the Queen's government in that country. With regard to the Fingo Nani, there has been no cross-examination, or scarcely any; and he swears most positively, that he, Botha, took the horses and guns, told them they were men he could not bear to look at, and ordered them to be taken to the krantz and be shot. Then Byosi was called, and he gives a description of what Jan Fourie did for him. He recovered his horse and gun, and gave him coffee. He says

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he did not see Botha; but is this to negative the solemn oath of those who all swear that he was there? It does not appear that they were all present on one spot, when the words were uttered "Take them and shoot them." Fourie might have been giving coffee. Byosi says while Fourie was holding my horse, Botha spoke these words. How can you get rid of these positive oaths? Fourie himself says he only came to Fort Armstrong at 9 o'clock;—it appears that they came there at daybreak,—so much for his memory in small matters. As I said before, I do not know why we have not the Rev. Mr. Thomson called. I have seen him several times in court.

Mr. WATERMEYER.—I shall tell your lordship;—because Mr. Thomson remembers nothing.

CHIEF JUSTICE.—But he should have been brought forward.

Mr. WATERMEYER.—No, my lord.

CHIEF JUSTICE.—Do not reason with me; you have made your statement, and there it is;—and pray leave me free from temper! Mr. Thomson may have been acting in a proper way, and if Botha had acted in the same manner, the lives of these men would not have been in danger. Then, it is singular that Fourie said he did not see guns. Can you believe that so many men assembled on that occasion without guns? He only says he did not see them; and he swears that Botha was with Thomson and Groepe. He says "I cannot tell what was done in my absence." In fact it was a scene of confusion and tumult. Then, gentlemen, with regard to the first count,—what have you against these three Fingoes? They never wavered in their statement that Botha was there, and that what was done was by his orders. It is said that he had no authority, and that therefore he did not interfere; but he is admitted to have possessed influence, and it is unfortunate that he did not extend that influence on behalf of these men. It is unfortunate, as showing his disposition, that he did not interfere. He does not deny, from beginning to end, the state of things in which the attack upon the Fingoes took place; and the very excitement shows that the men who used this violence, used it with the assent of those there, whose influence, if properly asserted, might have prevented it; but it is also sworn that the prisoner did himself commit the violence of threatening to shoot the witnesses, which is high treason, if shown against him. With regard to the second count, I would observe that it is the intent, and not the effect of the intent, which constitutes the treason. All the three Fingoes have been examined, and in no respect do I know that they differed with regard to the incidents as they arose that day upon and to them. Mango and Pempini appear to me as perfect, in all that belongs to a witness, as I have seen in court. From beginning to end, there was no hesitation,—if there was flippancy, there is an end to the remark. If the manner in which they gave their evidence arose from any particular desire or ability to fabricate facts, then it recommends itself to you in regard to their credibility; but nothing can be more the same than the evidence they gave in chief. It is sworn that the prisoner said, "Your Fingoes, I took you out of Hintza's country, and I will send

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you and your little English captains over the sea." It is not for me to suggest to you any evidence upon which I can rest the discovery of ill-feeling on their part towards the prisoner. Can it be sufficient to say that the Fingoes as a class hate the Hottentots,—and therefore they hated Botha? If it had been Uithaalder, I could understand it. Boko states, that Brass took his horse from him by Botha's orders. In his deposition before the magistrate, it would appear that he said it was taken by Botha himself, but he denies having said so, and it is suggested that it may have been an error in the translation. It appears that the interpreter on the occasion was Mr. Cyrus, whom we all know from long experience to be thoroughly qualified, both as regards his accuracy as to facts as his knowledge of the language, and who tells us that he took down the evidence as given. But however this may be, it only applies to Boko; the others were not present. Jordaan swears that he took this witness to commandant Groepe to satisfy him that the outrage was not committed by Botha's people, and that he was satisfied; but this does not remove Mango and Pempini, who are clear and positive as to Botha being present and committing the act charged against him. Then, another exception is taken with regard to Boko, in reference to the letters being taken from his pocket, and not from his haversack. What is the inference. That because he said at one time the letters were taken from his haversack, and at another time from his pocket,—how far will that affect the general truth of his evidence? Here, again, he does not allow that the magistrate understood him. Then, with regard to the firing of the gun, Zeeland, a witness for the prisoner, admits the fact that he saw the gun raised, though he did not see it flash in the pan. This lifting the gun, at once shows the disposition of the men who had come out from Fort Armstrong; and it is certain that at least one of them had a very hostile disposition to these Fingoes, and that he was only deterred from violence by the interposition of Jordaan, or by the happier result that the powder flashed in the pan. Pempeni swears most positively that Botha helped to plunder them, and ordered them to be shot. Another little variation was as to the words, "take them to the post and they will be treated according to law." Mr. Cyrus tells you, that the Kafir words first used import "according to law," though when the witness attempted to repeat the expression in Dutch, this meaning was not conveyed. Whether the meaning was "treated according to law" or "treated as they deserve," is for you to consider. Jordaan states that he did did not see Botha during the time this scene took place; but it appears that he attended to a particular man, whose horse and gun he had recovered, but this does not extend to the other witnesses; and thus the second count stands upon the credibility of these particular men. But upon this count another circumstance arises,—that Botha was not there at all. Fourie stated that Botha was with him at Philipton from break of day. Jan Fourie also says, that he saw him at day-break. I cannot alter the facts, gentlemen. If you believe the Fouries, it is proved that he was with them. But a man may swear with the greatest confidence, and yet be mistaken. These men swear he took coffee with them, and Zeeland swears that

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Hatta came in afterwards. Whether this occurred on the particular morning referred to, or that Botha, who can gallop fast enough when in a hurry, had got back to Philipton, is for you to consider; and, gentlemen, I here say, that if you have a doubt on these facts, the prisoner is entitled to the benefit of this doubt. Why? because the prosecutor is bound to prove the charge beyond a doubt. I cannot understand the transaction. It is of no use going into particulars. These witnesses do swear that he was not there that day. Then there was something about a little note, which one of the Fingoes says he gave to Mr. Thomson, after the letters had been taken from them. It may be that there was a note with one and a packet with the other; but this is a small matter, and I leave it with you. This is the case as to the second count, and if you believe the prisoner's witnesses in opposition to these three men, he will be entitled to your verdict of acquittal as to that count. The third count rests certainly upon very different evidence to that which supports the other two. It stands upon the evidence of one witness, and the acknowledgment—not confession—which the prisoner himself gave of his own accord, when he made a certain statement before the magistrate. In regard to the witness, Nieuwveld, the prisoner's counsel expressed himself with great force and seeming indignation. He considered that such a witness deserved scarcely any attention. And here I would observe again upon the peculiar position in which the judge is placed by the rule of this court,—that I am obliged to appear as a counsel against this man, because the Attorney-General has no reply. It appears as if I were speaking as counsel for the crown, and not as a judge. But it is necessary I should see that the jury are not left under wrong impressions. It is said that this man is an idiot;—but such as he is, he swears that which supports the charge on the third count. If you do not believe him, there is an end. The Attorney-General can only produce such evidence as can be got;—he cannot get men from Uithaalder's camp. The prisoner's counsel said he dismissed the evidence of this witness as not worthy of belief;—can you dismiss it for the same reason? Do you feel that, although he did not give us all that he perhaps might have given if he had been more intelligent, he gave us enough to prove the charge? Could he have kept anything back? He was in the rebel camp;—is there any doubt that he saw Botha there? We can understand the rebels afterwards sending to Philipton for gunpowder,—when, as the Attorney-General said, if Fourie had taken a gun and blown this man's brains out, he would have had the answer he deserved. The evidence of Nieuwveldt amounts to this,—that he was there and held a horse; that Botha came there and dined with Uithaalder and Macomo; and that he heard a conversation between them,—no matter what it was, if it shows a feeling of rebellion, and sympathy with the rebels. Why did he go there at all? We know that he went on certain other occasions with some respectable persons, but here he goes alone. And on another occasion he is sworn to have been certainly there,—when he tells the rebels that he is working with them, and that his sons are working with them. I cannot alter this

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count. If you disbelieve Nieuwveldt on account of his utterance, there is an end; but his very simplicity—if it be not subtlety—is a ground for credence. Is the man capable of framing a story, or of adhering to a story framed for him? I only know that it is my duty to consider the prisoner innocent until he is proved guilty;—whether he is guilty, is for you to judge. With regard, now, to the fourth count,—the first question that presents itself is,—if the prisoner committed the acts here charged, how are you to account for it, that he did not go to the rebel camp? It is a question we must ask, and we must answer it to a certain degree. I say if this man fought at Balfour, why did he deliver himself up instead of joining the rebels? What was the man's purpose? Was he like a bat, hovering between the two parties? How is it that he joined the Messrs. Read and others after the fight? If he acted the part charged against him in this count, there must have been actual concert between him and the rebels; and yet the rebels could not have relied upon him, nor he upon them. Gentlemen, it is a difficulty in the case. I cannot understand the man. His whole field-cornetcy had gone into rebellion, his own sons had gone, and, alas! alas! they had taken his gun,—and yet he is spoken to by Commandant Groepe, and he still acted the part of a loyal subject. There was nothing to prevent him from joining the rebels,—but he does not; he remains and joins another party in the field, and finally delivers himself up. But the evidence is of a strength that I know not how it is to be broken. The only way in which it is attempted to be broken, is by attacking the character of the witnesses. Hermanus Lotz is the first witness called on this count. Now who is Lotz? He is under sentence. He had delivered himself up and was tried by a court-martial, and is now under the sentence of the law. There is an objection taken to the evidence of such witnesses;—but what is the objection? On the one side, it is said they can suffer nothing more than they are suffering. The Attorney-General says they may be put to harder labour, or be otherwise more severely punished if found guilty of pejury. You have heard the explanation given by the Attorney-General of the manner in which these witnesses have been brought forward; and it must appear that in this respect the prisoner has every thing to be thankful for. It is proved by one of the witnesses, who swears most positively, that during the Balfour fight he saw Botha there, and saw him ride into the hollow where the rebels were firing upon the troops. Whether he discharged his gun once or oftener does not change the nature of the offence. It would be absurd for a man to go out alone to a fight of this kind. He is said to have left Philipton with a party. Lotz says he saw six, but when he passed near Brander there were about twenty. Gentlemen if you disbelieve Lotz, and have reason to disbelieve him, there is an end of the story; but he swears that the prisoner was there for a long time; that he saw him firing and acting in common with rebels; and that he saw him return from the fight. Gentlemen, I cannot tell why Lotz should be supposed to be an interested witness. Then, with regard to that yellow horse,—it is a matter of great concern as regards the evidence given on the part of the prisoner afterwards in this case. It is not only Bantam who speaks of it, but Arend

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April swears he saw him with the horse. And they speak of the same black hip jacket that the others mentioned, and which would appear to be such as is worn generally by farmers in the country. They do not speak of seeing him on the spot where the fighting was, but they saw him pass along. On the part of the prisoner, there is no evidence, except what is said of his going the Readsdale road; but you will consider whether the distance was so great that he could not have turned off afterwards towards Balfour, so that this does not necessarily negative the evidence with regard to his being seen at Balfour that day. But there is also the evidence of what he said at Fort Hare, in the room where fifty men slept. The whole of the evidence proves that Botha did actually say something of his having been at Balfour, and won a yellow horse. Was this a boast, or a vaunt, to raise himself in the estimation of those who heard it, as what they would consider a deed of valour? Are you satisfied with the evidence on the part of the prisoner, and more especially in respect to the production of these four men? Was there an acknowledgment of his having been at Balfour? If he was there, and fought there, what matters it whether he told them from whom he won the horse? It may be a mere vaunt on the part of Botha; and I should readily doubt the propriety of convicting on such evidence alone; but in connection with the other evidence, when the man admits the fact that he was at Balfour, it is for you to say how far you will reject the force of such testimony. The counsel for the prisoner says that this part of the case is all invention, and all memory on the part of the witnesses. I think I need not waste your time in asking with what corrupt motives they could make such statements. They tell you that they do not know why they were brought down from Bain's Kloof, and there is some difference in their statements. Cobus Van Beulen states, "We asked why he, the old man, had also come to us in the cell. He said it was on account of a yellow horse which he had taken from a Kafir, the morning when the farmers came and fought at Balfour." As the Attorney-General observed, with regard to such a discrepancy, it is rather a confirmation of general veracity, and shows the presence of Botha in that place where he could only have been for one purpose. Jansen says, "I was in the same prison with Botha. I heard Botha say the reason he came there was about a yellow horse which he had won at Balfour. Van Beulen and Hans Groepe, and others, were present. Botha did not say how he got it. He said no more." Marthinus Groepe said, "I am a son of Commandant Groepe. I know Andries Botha. I was in confinement with him at Fort Hare. I heard him speak there of a horse which he had won at Balfour in the fight. He said nothing more about the horse that I remember." He further states, "I was at Fort Armstrong the day that Uithaalder's commando came there. When we were ready with our guns to resist, I heard the old man say, 'We will be fools to fight against our own people for the sake of the English, and why should we purposely enter into a case with which we had nothing to do?'" Then you have the evidence of John Green, who tells you, "Botha often brought messages from the rebels requesting me to leave Fort Armstrong. This was before the 22nd.

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He brought me one message from a man named Barends Neuka, a Bastard, stating that he wished his old friend John Green to leave Fort Armstrong. I knew that man well. Botha said he got the message at Blinkwater, where he had gone with a lot of people. He was in the habit of going with people from Fort Armstrong to the Blinkwater camp. I have seen Botha ride alone and unarmed from Fort Armstrong, and he has told me that he had been visiting the rebel camp. He told me so many times." He also states, "I remember when the fight at Balfour took place, when the farmers came down from the Winterberg to attack the rebels. I saw Botha at Philipton that morning, on horseback armed. This was on the 22nd February, at peep of day, before sunrise. I was walking about in Philipton. Five or six people were with him. I did not know them; they were two or three hundred yards off; it was just light enough to see them. I can speak confidently as to Botha. They went in the direction of Balfour. The firing had already begun. It might take a man about half an hour on horseback to go from Philipton to Balfour where the fight was. I did not see Botha again that day. I never saw him again until I saw him at Alice. I remained at Philipton all that day. After the fight, the people came to Philipton from the direction of Balfour." That, I believe, is all that Green states upon this point in the examination in chief. Then Hermanus Lotz states, "I know who were fighting at Balfour; there were the Ghonas fighting with Hermanus' people against the farmers. There was a great deal of fighting that day from daybreak till 10 o'clock. I saw Botha there at the river called Macomo Hoek River. He was on foot; I saw him standing shooting at Englishmen and farmers. I did not see how often he discharged his gun, but he fired many shots. The boers were on the flats. I was on horseback. Before the firing had ceased I went to Philipton. I think it was past 9 o'clock. I saw Botha again that day at Philipton. He came from Balfour side. He had a horse with him, a yellow horse. He was leading it and riding another horse, his own horse. I said he had a fine horse, where did he get it. He said he got the horse from the farmers. He said nothing more. I know Stoffel Botha, the prisoner's son. He resided at Philipton. He had been wounded in one of his legs when the fight was at Fort Beaufort. I heard from his father that he had been with Hermanus. An hour after I saw him with his son ride away from Philipton. Stoffel Botha rode the yellow horse. They rode towards Van Beulen's Hoek." The jury will recollect Botha's acknowledgment of having been there, as he states, "from necessity." Lotz proceeds to state that he was at Fort Hare, and remembers Botha being brought there. He says, "The prisoners slept there all together. Botha spoke nothing to me of the horse, but he spoke of the fight. He said, if Gen. Somerset had not come, not one of the farmers would have escaped. He said they surrounded the boers, and that the advanced guard had already retreated. He said he had shot considerably at the farmers and at the English. And I saw him do it. He spoke as if he had been fighting himself, and not as a looker-on. There were about ninety people in the tronk. This was said openly." Lotz then speaks of the Lushington affair which you will remember is

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the subject matter of the sixth count. Then he states, "On the day of the fight at Balfour I left Fort Armstrong because I was afraid of Uithaalder's people. I fled to Philipton. I was on horseback. I considered it safer to go by Balfour, because I was more afraid of Uithaalder's people than of the Kafirs. There was fighting on the other side of the river, and I went on this side, along the brushwood close to the river. I had my children with me. We did not go near the fighting; we went by the road. When I saw Botha, he was a little further from me than from here to the tronk." Now, if this witness, gentlemen, meant to state a falsehood, why did he place himself so far off? If he intended to tell a falsehood, he would take care to place himself at such a distance that the observation could not arise. He says, "The farmers were higher up, and Botha was down below. I could see that he loaded and fired, and loaded and fired again." I must say with regard to the evidence Mr. Read gave as to the situation of the place, it did not give me a clear idea as to the gardens and the school. Lotz states, "There were no bushes between me and where I saw Botha fight; there was nothing that could prevent my seeing. I stood near the school-house upon a small bank of stone." Piet Bantam is inquired of on the same subject. He says, "I was at Balfour that day. I was close to the river. While I stood there Botha passed me about 50 paces off. I am sure it was Botha. He was on horseback, and had his gun and bandelier. There were about fifteen men with him, all armed and on horseback. He rode straight to the drift. I could see where the farmers were fighting, I could not see the people who were firing at them; all I could see was the smoke rising. The boers were on the hill, and those firing at them were down below. I saw Botha go into that hollow. I could not see Botha firing, but he was where firing was going on." Now, here it struck my mind,—this witness says he did not see Botha fire, but he swears he saw him go into the fight. Lotz swears that he saw him fire. If there was concert between these witnesses, would they not both say the same thing? He says, "I saw Botha again that day; he was leading a yellow horse, and riding a brown one. He was riding slowly on the road to Philipton. There were more people with him. He went by the foot-path, and the rest went by the wagon-road." Here it will be observed the witness mentions facts which could scarcely be the offsprnig of invention or mere pretence. He afterwards gives the same evidence as the others with regard to what passed in prison. He says, "The prisoners talked with each other much about the war." He says, "I heard Botha say with his own mouth that he was at Balfour that morning, and that he had won a horse from the farmers. He did not say from whom. He also told us of the fight between the rebels and the Fingo patrol in the mountains at Lushington. He said it was a great fight, and that many of the Fingoes had been shot; and if they had not fled, few of them would have escaped. I heard him only speak once of the two fights, and that was on the same day." Such are the statements of these witnesses upon this point. Do you believe them? As I said before, it seems monstrous to me, and unintelligible, how the prisoner should have committed these acts, and yet not have

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himself joined the rebels. But then,—what was there in his former conduct, what had he done, that he should fear to deliver himself up when the General arrived? He had acted most loyally, it is said, and yet he was not found at Fort Armstrong nor at Philipton. What was the cause of his alarm? Then it is said he was not tried at Fort Hare. There might not be evidence brought forward immediately, and there was enough to do at Fort Hare at the time that court sat; every hour an attack might be expected; and it cannot be supposed that the proceedings of the court-martial could be delayed when the forces were engaged with the enemy. The evidence afterwards came out, and it was thought fit that the case should be brought here, that he might have a fair trial; and, thank God, I have no doubt that here he will have a fair trial. Gentlemen, the matter is so strong in respect of this charge, that I think the Attorney-General was justified in calling it the cardinal point as to the prisoner's loyalty. Upon this part of the case there is no *alibi* attempted to be set up, except what is said by one witness, Isaac Izaks, as to seeing the prisoner go to Readsdale. Green swears that he saw him ride out at day-break towards Balfour——

Mr. WATERMEYER.—Green's evidence has been directly contradicted by Mr. Wienand.

CHIEF JUSTICE.—What, will it alter the case if you leave him out altogether? It is only a diminution of the strength, and does not controvert the charge. I am not careful to press Green, and it will be in your hands to say whether the circumstance mentioned entirely impugns his evidence. Izaks says, "I remember the day of the fight, I think on a Saturday. I was at Philipton. I saw Botha at Philipton early that morning. It was just daylight, the sun had not risen. A little after that, I saw him ride out alone in the direction of Readsdale, an opposite direction to that of Balfour. I did not see him have a gun or a bandalier. I saw him again that day between 10 and 11 o'clock; he had no gun with him; he was near his house, and his horse had already been knee-haltered and was running on the land." Then he was questioned about whether Botha's mouth was not black, as if he had been firing, or his having a percussion gun; but it appeared to me that as he was at home, nothing was more natural than that he should have washed his mouth. In his cross-examination, he stated that the roads to Balfour and Readsdale are directly opposite, and that Readsdale is five or six miles from Philipton, and he states that Botha had on that day a black hip jacket, buff moleskin, and a low-crowned drab hat. As far as it goes, this agrees with the description given by the other witnesses who saw him on the road to Balfour. Jan Brander states that he saw Botha on the morning of the fight at Balfour, at the place Spion Kop, with Plaatjes, about half an hour on foot from Philipton; and that they had three horses, all saddled, one of which was a yellow horse. He states that he asked Plaatjes where he had got such an ugly horse; and Plaatjes said it was not his, but Botha's; and Botha said he had got the horse with the cattle; that there were Kafir cattle running about, and the Kafirs were driving them off. And he adds, "It was a yellow horse, and looked

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as though it had been overridden and knocked up. He said he found the horse saddled as it was. It had a new saddle." Now, as the Attorney-General observed,—is it likely that the Kafirs would let Botha take such a horse from among cattle which they were driving? And it is likely the Kafirs would have a new saddle? Here, however, there is a yellow horse proved by the prisoner's witness to have come into his possession that day; and if you believe his story, it goes to confirm the other witnesses, who swore that in Fort Hare Botha spoke something of a yellow horse which he had won that day at Balfour. Gentlemen, we have no evidence as to what became of that yellow horse, unless it be true that Stoffel Botha took it away. Why does not the prisoner account for the possession of that horse? Young Stoffel Botha, somehow or other, omitted to take the oath of allegiance, and it has been averred over and over again, and not denied, that he is now with the rebels. A great deal is said of the injustice of punishing a father for assisting his wounded son; but even in such a case, whatever were his feelings, he would still do so subject to a charge of high treason. Is Botha proved to have given a horse to a rebel? If you believe that he did, it is for you to say, whether he did not thereby aid and assist the opposition traitorously made to Her Majesty's forces. It has been observed that the horse is just such a one as might have been ridden in the fight by a farmer, and not at all such a one as would be likely to be found running with Kafir cattle. And in the prison he said he had won a horse. If you do not believe this evidence, all the other evidence goes to the winds. With these observations, I pass from the fourth count, if it is not suggested to me that there is any other portion of the evidence bearing upon this point which you would wish me to read. The fifth count rests chiefly on the evidence of one witness, Hans Vriester. He is a convict under sentence.

Attorney-General.—Vriester is not a convict.

Mr. Watermeyer.—He is an accomplice, not yet tried!

Chief Justice.—Then my mistake was for the prisoner; my only dread is that I should make a mistake against him. Vriester states that he fought at Balfour under Uithaalder, and that when Uithaalder's people were beaten, they went to Van Beulen's Hoek, where they arrived at 3 o'clock next day. He says, "I know Stoffel Botha, Andries Botha's son. He was wounded in the foot at Fort Beaufort. I saw him there at Van Beulen's Hoek. Andries Botha, the old man now present, was also there. He was there with his son, and gave him a yellow horse. The horse was saddled and bridled. When I first saw it it was kneehaltered, with the saddle off. Andries Botha remained there for about an hour after I arrived. His son went with us that night, and rode the yellow horse. I saw Andries Botha go away on foot." Then he says, "There were no cattle belonging to the Philipton people there that day. There were only the cattle there that the rebels brought out of the krantz. If there had been other cattle I must have seen them. The rebels had about 300 cattle which they had brought from Fort Armstrong. When they saw the General advance, they drove the cattle off. As far as I know there were no stray cattle among them. I do not know that I

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am to be pardoned; no one made me any promise. I told this to Mr. Stringfellow at Fort Beaufort, when I surrendered myself about six months ago. Mr. Stringfellow made me no promise, nor anybody else. I am sure that I have not taken the son for the father." Then we have the acknowledgment of the prisoner before the magistrate when Vriester was being examined. It strikes my mind that this is a very strong fact, and that it is most important and material for your consideration. The weights, as with all evidence, are with you; but I put it again that this seems to me important. Why? The prisoner had been discharged from custody, and expected that no further proceedings would be taken against him. He is afterwards charged and brought before Mr. Hudson, at Graham's Town. He has had time to look into the circumstances. He is not an ignorant man, but a man of considerable activity of mind, with no small degree of intelligence. He is coming to answer a charge, not before a military tribunal, but before a civil magistrate. There is all that can call up the attention. He hears the witness examined before him, and all at once he chooses to say something. In attempting to controvert the evidence, he makes an acknowledgment of where he was, which is the main jist of the count to which we refer. Mr. Cyrus said, "I remember the man, Hans Vriester, being examined in Graham's Town before Mr. Hudson in reference to this charge. The prisoner was present, and asked questions of the witness. After putting his questions, when he could put no more, he said he would not deny having been at Van Beulen's Hoek at the time mentioned by the witness. That he had proceeded there for the purpose of looking for cattle which had been lost, but that he did not then furnish Stoffel Botha with a horse." Gentlemen, I have said this case should be tried as any other, whether high treason or larceny. Now, suppose a man charged with theft says, "I picked the articles up,"—he must prove that, —he must, by evidence, rebut the presumption raised by his having those articles in his possession. The prisoner acknowledged that he was at Van Beulen's Hoek, and gives as a reason that he was there searching for cattle. Now, we have evidence there was no stray cattle there. I have said he was a man of intelligence. He says he was there from necessity, because the Fingoes were surrounding Philipton. Why did he put his nose in a trap? Why should he go where, if he was a loyal man, he was certain to be shot? It is for you to say how far this shows that he was an active traitor, and failing in his allegiance to Her Majesty. In his own declaration before the magistrate, he states,—"With regard to the accu-
" sation of having been seen holding intercourse with the rebels
" at Van Beulen's Hoek, I was driven there from necessity,
" because I was shut out from Philipton by the Fingoes, who
" surrounded it on the occasion when General Somerset was
" there. There the son of Vigiland Friester saw me. The
" accusation of having been at the rebel camp near Lushington,
" in company with Macomo and Uithaalder, I know nothing
" about. The Hottentot has probably mistaken my son
" Andries for me." Here you will observe that he says, not that the witness is corrupt, but that he is mistaken. Now, gentlemen, I will refer to the last, the sixth

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count. It is sworn, as I have already read to you, that the prisoner did, at Fort Hare, state the manner in which the patrol had been attacked; and that he confessed having been with the rebels on the occasion, saying that they had the Fingoes terribly under the ball that day, or that the Fingoes had it smartly; and again that he said, "I was in the fight with the rebel Hottentots, and we hurt the Fingoes a good deal." Now, gentlemen, I have gone through the evidence,—I am sorry to be obliged to confess, very imperfectly,—I can only regret that the state of my health has not allowed me to energize more, and more particularly to point out those portions which bear upon the several counts.

Mr. WATERMEYER.—Would your lordship read the evidence of Jan Matroos, bearing upon the Lushington count?

CHIEF JUSTICE.—Certainly. [His Lordship here read Matroos's evidence.] Hatta confirms this most completely, but what does it amount to? Botha is in the field, and it is said this rebuts the idea of his being in the fight; but if he was not, how came he to say at Fort Hare that he was? It is for you to weigh the circumstances against the vanity of the man, when he states that he had been engaged on the occasion, and that the Fingoes had suffered smartly. I was saying that I have—very imperfectly I know, but compulsorily,—I could not do it better—referred to the evidence in detail. You will now take up the counts and consider each as a separate indictment, and you will then consider whether each count is so far proved that he is guilty of the crime charged in that count; and if the whole are proved you will find a general verdict of guilty. Gentlemen, it is said by the witnesses for the prisoner that he deserted from Philipton, and did not make his appearance on the day the General was there, for fear of the Fingoes. It is said that any man may be subject to a particular apprehension. Take it for granted that a brave man was frightened and went away from fear; gentlemen, why did he keep away for four days? Why did he connect himself with Jan Matroos and another who were rebels at the same time? Why did he go back to Philipton when the General left with the Fingoes? Was he still the bat, hovering between the two parties? How came he to keep out? Why did he not join the rebels? Why did he act in such a way as to make himself subject to be treated as a rebel by surrendering himself to Capt. Fisher It is said that the cause of his fear was that he believed himself to have been fired at at Fort Beaufort. That there was feeling of hostility shown towards the escort, there can be no doubt. The mere fact of Col. Sutton's assistance on the occasion proves that there was such hostility; and it is sworn that a shot was fired. But because a shot is fired at a running gallop, is that a cause that a brave man should be terrified? Oh, but it is said he was pointed out as the "yellow handkerchief," in the way that the Fingoes point threateningly. But what was there in this, if he had not that in his conscience which told him why he was pointed out? I speak strongly; I put it strongly, not in feeling, but in duty. I am a man of impulse, and I cannot help speaking strongly. Gen-

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tlemen, it is said, this is a most extraordinary trial. It is, certainly extraordinary, as it includes the public security of a great body of persons. But it is only extraordinary as regards the circumstances in which the prisoner stands placed; and although the public interest connected with the circumstances may be naturally felt, yet as regards the duty you have to discharge, it is as simple a case as could be put to a jury, because there is no embarrassment as to legal principles or their application. It is for you to be satisfied of one thing, —that there is sufficient proof to convict the prisoner. No matter whether the Government are concerned, or care not whether he is convicted or acquitted. And now comes a general observation,—it is extraordinary to see the intercourse the prisoner gave the rebels,—that he could go in and out amongst them, and that he exchanged friendly salutes with them, at the time Uithaalder had threatened what he would do,—at the time Fort Hare was invested. Why did he go from Philipton? Except he was at one with the rebels one cannot account for it. Jacobus Fourie said the only thing he knew against him was his leaving Philipton; but Fourie himself acted very differently. I said, I believe not unjustly, and I repeat, that he left this court in regard to the part he had borne in court, fully sustaining the character he has borne during the last 40 years. If those by whom the prisoner has been so strenuously defended had believed him guilty, they would not have appeared and defended him with any purse,—I know not whether the London Missionary purse has been employed for this purpose,—not that I object to his being supplied in prison with any assistance or comfort,—they are the last persons who would appear for any man, unless they believed him to be an honest and loyal man. At that time it was questionable who were loyal and who were not. Groepe tells you that he declined to make the prisoner an assistant field-commandant with himself. That might be from jealousy. Then with respect to what Sir Andries Stockenstrom stated, in reference to previous character and services, it must be admitted that no higher character could be given. Col. Sutton has made a statement, and though elsewhere his word is as good as a statement on oath, yet here, being a statement and not a regular deposition, I have not received it as evidence. The character that Sir Andries Stockenstrom has given was rather as to general conduct. It ought to have been confined as to how far the prisoner's loyalty is concerned. But, be he all angel,—it is only if there be a doubt as to the proof of the facts charged, that previous character can be taken at all into consideration. If he be an angel, and the facts proved,—the angel is condemned. If you disbelieve the Fingoes under the first and second count, or the evidence under any of the others, then take his zeal, and loyalty if you please, into consideration; but you will be led astray so far as you go into that consideration except upon that particular case of doubt. It does not occur to me to add anything to these imperfect observations. I feel thankful that some of you have been taking your notes, and I feel a confidence that you will go to your consideration of the case with a corncern for the peace that dwells within, and dwells nowhere else. And I trust that the result will be satisfactory to your own consciences, satisfactory to the public feeling, and

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still more satisfactory to the conscientious administration of public justice.

ATTORNEY-GENERAL.—I wish the jury particularly to understand and to bear in mind, what I believe to be your lordship's direction, that if they find the prisoner guilty only on particular counts, their verdict will be guilty on those counts, and not guilty on the others; but if they believe him guilty of all the charges, they will then bring in a general verdict of guilty.

CHIEF JUSTICE.—That is exactly what I meant. Gentlemen, you will now retire and consider your verdict.

The jury retired for about an hour, and returned with a verdict of guilty on all the counts, with a recommendation to mercy, for his former loyalty, good conduct, and services.

The CHIEF JUSTICE, addressing the prisoner, said,—Andries Botha,—you stand convicted of having committed the highest crime that the law can know, or that the justice of the country can denounce. There is but one sentence, therefore, that can fall upon a crime of such enormity, of such aggravation, as that which stands recorded against you. If the miseries and wretched consequences that arise from rebellion be for one moment taken in view, the reason at once approves why the law should thus denounce,—why justice allows of no escape from the condign sentence to which the law awards. Prisoner! it is said that you have been one of the bravest men in the field,—may you prove the bravest man on the scaffold! To the scaffold the law must send you. To execution, in departure from this life, must you be rendered. And is the sentence severe? Is the sacrifice of life rashly made, as regards the penalty and its consequences? We have but to look at the crime,—to see that if the prevention of crime be the object of the criminal jurisdiction, the heaviest punishment should fall upon such a man,—a traitor to the heart,—a traitor to all the influences that should actuate a loyal subject of the Queen,—faithless to the public interest that a loyal subject is bound to have in respect. Prisoner, sentence of death will be denounced, and the execution of it will be inflicted upon you, without any injustice. The law is satisfied that you are a traitor in the heart,—that you have been a traitor in the acts proved against you. You must be made an example to all those who are of the same disposition as yourself. It is not for your own punishment,—you are too small to weigh anything in the scale. It is to teach the other traitors in the field that when their crime is discovered, and they are found to be traitors, they will suffer the same condign punishment of which, in you, they behold an example. As regards, therefore, the public justice and feelings,—they are satisfied with all that has been done. If even it could be shown that the jury have been mistaken in the result of this inquiry,—(and can it be thought that the sentence is unjust, as not founded in truth?)—still the example must be made, since as far as human judgment can go, you have had a fair trial, and been righteously condemned to death. Can you look at these gentlemen, and not say that they have been as the conscience of the public, throughout this

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trial? Care, great care, scrupulous concern, has been in influence that the truth alone should be brought forward against you; and the manner in which this duty has been performed should at once set at rest the public mind and conscience in regard to the verdict. If not by such fair jury trial, where can such crime find its righteous punishment?—where is justice to seek for its vindictive reparation? You have had, prisoner, all that a prisoner could have in respect to a fair trial. I again say, who will dare to allege the contrary,—who will dare to arraign the judgment of these gentlemen, sworn before God, as in his presence, to pronounce a verdict upon the case before them. They have not been long in consideration; they require but a little time to make up their determination, and they have pronounced you to be found guilty. Prisoner, as I advert to your crime, how shall I advert to the private personal interest under which you acted. I have before stated all that belongs to the case; I grieve at the infirmity that belongs to the system, but the conscience of the judge was never more at rest than at the result. But when I reflect on the conduct you have pursued, I see a man who has been a double traitor,—a traitor to the rebels even as he was to the Queen. You have been as the bat, fluttering between two sides and trying to make friends with both parties, while there was, within, the spirit that operated with you in the year before last, when you went to complain to Sir Andries Stockenstrom. You went not there with personal complaint, you went with the rebel stream, under the strongest ill-feeling toward the Government itself. Here grew those bitter fruits which brought you to these last days of bitterness, of shame. If grievances are endured, men must wait under them until they legally can find remedy. Whether the grievances are true or false, the law says rebellion shall not be excused. The grievances of the few are not to endanger the greater benefit of the many, as involved in the safety of the country. I know not what the grievances of the Hottentots are; but this I do know, that there has been a disposition of those who befriend the Hottentots,—and God forbid any of us should be their enemies,—that there should be every effort made for their welfare and improvement. But be that well-founded or not, you have lent yourself to the overthrow of the Queen's government. I believe not one jot or tittle of your tale of fear of the Fingoes. You are not a man to fear a single shot, or to allow fear to drive you, for days and days, into the fields. The case has shown how little you feared for those shots. Prisoner, the bolt of law strikes you down! Dead in law you must soon become. Your conduct deserves no pity. Can it be true that your field-cornetcy gave themselves up to the rebel cause without your knowledge? You were not without influence. Can we think that you had no power of restraint over your own family, and that your children left you against your will? Am I to believe that you let them take your gun? You have shown that you would sooner have parted with your life. I believe that you did associate with the rebels, and that they fully expected you to join them in their cause. I believe that they would have elected you as their leader, and that you only waited

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for a season to take the command; and I believe that it was only a doubt as to the success of the rebels that turned the scale. I am not a man to make such observations for the pleasure of making them. The times of Jeffreys are gone, when such prosecutions could be conducted with blood-thirsty severity;—but the case, the circumstances, justify me in making these remarks. Alas! prisoner, would that I could teach other rebels, by your example, what is the result of their vain attempts. Would that I could hold you up as a spectacle,—as the serpent between the living men and the plague,—that your fate might be a cause of safety to others. Alas! alas! prisoner, what have you sold your life for? For a bubble on the stream of disorder. Can you say that you have done no wrong? How many have fallen by the sword drawn through you! How many widows bewail their losses, how many orphans mourn their protectors! Murder destroys individuals; treason murders by wholesale. Robbery deprives individuals of their property; treason breaks through the city gates, and sets it on flames. Prisoner, this is not too strong, as touching your own example and conduct. Having caused these evils, you have at last brought yourself to a fearful end. I know well that great concern has been shown for the spiritual improvement of the inhabitants of the Kat River settlement. I know that nowhere has there been more effort and desire than for the evangelization of the Kat River people. I hope that you have felt this, and that the seed scattered so earnestly may yet come up in the ground of your heart. It is not for you now to think of treason, or treasonous concerns; it is for you to prepare for death. The trial here is at an end. The greater trial, where the thoughts and feelings of the heart are judged, awaits you hereafter. We can only judge of motives by the outer conduct, but the bar before which you are now to appear will try the inmost motives of the heart. Those who, we have heard, have visited you in prison, have taught you that this is an awful state. The same friends will still wait on you, and you will need no directions from the bench to show you how to meet your God. Alas! alas! man, short is the duty that belongs to the justice of the court. I have now but to pronounce the dreadful sentence that makes you dead in law. It awaits, then, with him only who has the highest discretion in this government when you will be dead in fact. Prisoner, I will not deceive you. It is true that other rebels have only had awarded them hard labour for life; you may flatter yourself that such will be your escape. Prisoner, do not let such hopes repress those feelings, or keep you from those duties that belong to your awful doom. I cannot answer for the exercise of that mercy which the law has vested elsewhere; but it will be gladly my concern to further the recommendation of the jury on your behalf. Yet, let me say, that your conduct is well known and read of all men,—like a dark rainbow in the heavens against you, all may see on whom it rests. Mercy, if extended, cannot come hence,—never, never. The dead call aloud,—the future cries aloud,—the safety of the public closes the ears of mercy. The public safety claims your sacrifice. In safety to ourselves we must sacrifice men like you. Expect nothing, therefore, from the

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recommendation of the jury. It will rest with him who only may on his conscience listen to that plea. For yourself, fellow-man, traitor as you are—I have only now to pronounce the sentence, that you be taken hence to the place from which you came, and thence, at such time and place as the Governor shall direct, to the place of public execution, and there that you be hanged by the neck, until you are dead. And may the Lord Almighty have mercy on your soul!

The prisoner intimated a desire to speak, which having been acceded to, he said,—It grieves me, it grieves me, that I am doomed to death this day after all that I have done for the government. I stood there* one man, what could I do against so great a crowd as there were around me? So I stood that day, my lord; I was one man, and more people than are now in this court were opposed to me. My own people all left me. I spoke a great deal. I reported, Groepe reported, Wienand reported. I talked and strove with my people. I held them back, but they would not be restrained. I was left alone. Then Mr. Wienand said you had better come in. I got a wagon, and took my wife and children from Buxton to Philipton. I returned to my magistrate, Mr. Wienand. I took care of him as if he were my wife and children. I never quitted him but when he allowed me. All that he told me, I did. All that happened I told him; and I never went anywhere, nor did anything without his authority. Therefore, my lord, it grieves me, it grieves me, that on such a charge I should stand here to-day, condemned to death. As my people had turned away from me, so the people at Fort Armstrong turned from Mr. Wienand; and for his safety I took him to Fort Beaufort. It was a bad thing for me that I went there that day. There was the crowd against me, and I was a single man. They said I was a rebel, and pointed to my yellow handkerchief. My lord, I tell the truth,—I never was a rebel. I will not tell a lie, although I am to be hanged this day. I wish that gentleman (the Attorney-General) to listen to me; I wish to tell him the whole, for I look upon him as my father. They pointed to me and said, "There, it is he,—the yellow handkerchief." The square was full; they surrounded me with guns and assagais. Col. Sutton came there, but he could not see me, there were so many. He sent Mr. Read to call me. He said there was no chance to keep us safely there. Col. Sutton then brought me up to the place where the soldiers were, and the whole of the people came there too. My lord, I do not tell a lie; this is a thing that happened to me. My magistrate there knows that it is true. I said to him, "My children and people have all left me, I wish to stay with you." Mr. Wienand said, "I cannot go with you, and you cannot stay here; I cannot trust the men." Then Col. Sutton sent a troop of soldiers, and we began to saddle our horses, but every horse that was saddled they struck at. Then we gave some money to Mr. Read to buy things at the shop. Then Mr. Bovey came there, and Col. Sutton. I hope that gentleman (the Attorney-General) will listen to this. I

* At Fort Armstrong.

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do not know what Col. Sutton said to Mr. Bovey, but Mr. Bovey came to me; he beckoned, and said "Do not turn back now, there is a chance for you; that is the only road for you to go." I am sorry Mr. Bovey is not here; he would know that I tell the truth. I am glad that your lordship allows me to speak; although I have the name of a rebel, it was never my intentiou to be a rebel, and although I know it will not avail me, I am not a rebel now. Well, we then went off. Mr. Bovey and myself went in front. When we crossed the drift, Mr. Bovey's horse drank water. I would not allow my horse to drink water, for it had tasted nothing since the morning; so I galloped on, and then I was alone. When I got to the top of the hill I stopped, and then I saw the people from Fort Beaufort advancing armed with guns. Fourie told me that the Colonel said I must wait, and I waited there. Then two burghers advanced, they said, "Where is Botha?" One said, "Here he is." They came on each side of me, and one wanted to lay hold of my bridle. When I saw this I moved off, but they followed. Cobus Fourie spoke to me, and said, "Botha now is the time for you," and when I looked round I saw that it was, and I galloped off. They came after me, and chased me as far as from here to the Salt River, and fired a gun at me. They drove me as far as the hills opposite to Blakeway's place. It was dark, and there fear passed into my heart, when I saw that all I could do for Her Majesty the Queen would not avail me if they handled me so. That was the reason I sent a message to Col. Somerset, and he said, "You must not talk to me any more." Then fear was upon me. If I could have got to the Colonel alone, I would have gone, but I could not come up with him for the burghers and Fingoes, for I saw that although Col. Sutton tried, he could not keep them back. That is the reason I am here this day. My lord, I have faithfully served the Queen for a long time. I am an old man; I cannot see to do anything with a gun. If I carry a gun it is only to show another man that there is a gun. That is the reason I became afraid. It is the truth, my lord, I was afraid of the burghers and Fingoes; and there is the mistake, —that I went away, and did not remain when the Colonel was to come. If I had known that I would get into such trouble I would rather have remained, and let the Fingoes kill me. Tell that to my lord, [speaking to the interpreter,] it is the truth I speak this day. At Fort Hare, the General took me out of prison, but he was obliged to put a sentinel to guard me, and told him to "take care of the old man, and if anything happens you are responsible." He said, Botha, I have held you two months in the tronk, and I have gone round and round and cannot find that you are guilty. Then I went and lived with my wife and children. Long after that, one morning at sunrise, a servant came and said Col. Sutton wanted me. I went to him, and then he told me the story of Mr. Calderwood, and that they were to send me to Block Drift. I asked Col. Sutton what they were doing. He said he did not know. He said, "I won't let you go on foot, I will get you a horse." I rode and came there, and then I was put in the provost, and handcuffed, hand and feet, not knowing why. I never saw Mr. Calderwood; I never saw any one. After that a summons came, and I was taken to Graham's Town

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a prisoner, and from there I was brought here, and put in prison till this day. [The prisoner also entered into a detail of various circumstances connected with his conduct, the purport of which could be but indistinctly gathered from the translation given; and concluded by declaring that he had acted faithfully to the Government, and appealing to Mr. Wienand, who knew all that he had done.]—He was then removed.

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APPENDIX.

A.

Statement of MANGO, a corporal of the Alice Fingo Levy, before Mr. CALDERWOOD, 27th January, 1851, published in the *Cape Monitor Extra* of Feb. 3, 1851.

[See Examination of Mango, page 27; and Mr. Watermeyer's Summing-up, page 174.]

I was sent three days ago, in the night, with two other Fingoes, to try and ascertain the state of Fort Armstrong, and report immediately. The night was very dark and stormy, and we only reached the neighbourhood of Fort Armstrong at day-break. The people at Fort Armstrong seemed still asleep. I sent forward, across the river, Boko, to see if he could find any of the teachers. I saw a number of Hottentots immediately surround him, and take from him every thing he had—horse, gun, ammunition, and food. I then, with my other companion, crossed the river to Fort Armstrong. The Hottentots immediately surrounded us, taking all our property and ammunition, besides the horses on which we rode. The Hottentots beat me severely, because I had the mark of a corporal on my arm. Field-cornet Botha, whom I know perfectly, seized Boko, and took all his property. Botha took my blanket, knife, and money,—five shillings. Botha put his hand in my pocket and took out the money and my knife. Botha opened my knife, and said, he would cut our throats if we stayed with the English. I took the letters out of my pocket to give them to the Rev. Mr. Thomson, who had come forward with Groepe. The letters have been snatched from me by the Hottentots. I cannot name the Hottentot who seized the letters. We were surrounded by Hottentots. The letters were given to Groepe. I saw Groepe give them to Mr. Thomson. Mr. Thomson and Groepe were both crying. Mr. Thomson asked the people to give us up our things, but they would not. They said, the Fingoes are our enemies. Groepe had no power. No one would obey him. The white men who were at Fort Armstrong have escaped to Whittlesea. All the Fingoes in the Kat River have fled, or were to-day flying to Whittlesea. The Hottentots asked us to join the Kafirs against the English. They said, if we did not do so, we should be all killed with the English. Very few of the

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Hottentots are with the English. Most of the people in the Kat River are against the English, and with the Kafirs. The people of Blinkwater, and Botha, with Hermanus' people, have gone to attack Pringle's place, on the Mancazana. The Hottentots wished this, because they said that Hottentots had been killed there. We learnt this about the commando against Pringle from a Fingo at Fort Armstrong. Sandilli, with his people, joined by the other people of the Kat River, are to attack this place to-day or to-morrow. The Kafirs are to attack first, and when the Fingoes and English are tired, the Hottentots are to come forward and finish the work. That is what the Hottentots say.

MANGO ⋈ his mark.

B.

Requisition to Mr. WIENAND for the appointment of Field-cornet BOTHA as Second in Command to the Commandant.

[See Examination of John Green, page 67.]

Fort Armstrong, January, 16, 1851.

To J. H. B. WIENAND, Esq.

Sir,—As confidence in commanders is the great mainspring to military movements in times of war, we beg to say that we believe that it would please all the people in the settlement to have Field-cornet Botha appointed second in command to our respected Commandant, whose state of health is such that he has not been able to act with that energy which the circumstances of the times demand.

When Sir Andries Stockenstrom was going to attack Amatola, he appointed Field-cornet Andries Botha second in command to the Commandant; and on the day of attack, Botha had one of the divisions against the enemy, and afterwards was honourably mentioned in General Orders by Sir Andries.

We believe that every Hottentot would follow Botha into death as a commander, from his fearlessness and the shrewdness of his plans. We wish not by any means to hurt the feelings of our long-tried Commandant, but we believe that he himself has the greatest confidence in Botha as a commander under him. We believe that the Governor's proclamation would bear us out in the choice of a second in command.

We are, with the greatest respect, your humble and obedient servants,

James Green,
John Green,
Henry Heyn,
Willem Andries,
Valentyn Jacobs,
Fredrik Jordaan,
Willem Brass,
C. Magerman,
Jan Volskin,
Hans Jonker,
Marthinus Appels,
Alie Arends,
John McMaster,
F. Jordaan, jun.,
James Jay Eva,
John R. Thomson,
H. Thomson,
Coenraad Scheepers,
Isaac Isaacs,
Willem Harman,
John Sampson,
Philip Buis.

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C.

Order issued by Major-General SOMERSET.

[See Examination of J. H. B. Wienand, page 71; and Attorney-General's Summing-up, page 169.]

NOTICE.

Having this day received information from the Rev. Messrs. Thomson and Read, sen., that there are several loyal persons in the Kat River Settlement who have given no countenance to the insurrection of the natives, and who deplore it,—I hereby direct that all such loyal persons are to assemble at Philipton, Hertzog, Eland's Post, and Balfour, for mutual protection. I expect, however, that these persons so assembled at the above stations will cease to hold any further intercourse with the enemy in any way whatever, and that they will, by intermediate patrols from the above places, prevent the enemy from moving about that part of the settlement.

All commands of Burghers and all other forces are hereby forbidden to make any attack on the above posts without my orders.

And I hereby appoint the Field-cornet Cobus Fourie a Special Commandant in the Kat River Settlement for his good and loyal conduct, which he has ever evinced in a long course of service for the last forty years; and I command and direct that all loyal native subjects do forthwith repair to Philipton, and place themselves under the Field-Commandant at that post.

And I hereby further give notice that all inhabitants occupying the Blinkwater, Mancazana, and Lushington, and other parts of the Kat River Settlement, who have been in daily and constant communication with the enemy (who has been permitted to move unmolested through the location) who do not forthwith repair to the posts I have now pointed out, will be treated by me, and by the forces and Burghers under my orders, as enemies. And I call upon all those who have been in rebellion against Her Majesty to proceed to those posts, and lay down their arms, and submit themselves to the Commandant aforesaid, abiding my further directions until I take the Governor's pleasure thereon.

H. SOMERSET, Major-Gen.,
Commandant-General.

Fort Hare, Feb. 7, 1851.

D.

Letter of J. H. B. WIENAND, Magistrate, published in the *Graham's Town Journal* of February 8, 1851.

[See Examination of J. H. B. Wienand, page 75; and Mr. Watermeyer's Summing-up, page 198.]

The following is extracted from a letter addressed to us by Mr. Wienand, Resident Magistrate at the Kat River Settlement—but though not intended for publication, is so impor-

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tant, that we deem it due to himself, to the parties mentioned, and to the public, to give it publicity:—

"I have just seen your paper, in which mention is made, that I escaped merely with the clothes on my back. I indeed came into Fort Beaufort with only the clothes on my back and a few other articles of clothing, but although I have been robbed of the greater part of my property, a great deal has been saved by some *loyal* (if I may be permitted to make use of the phrase) people, who were so ashamed of the acts of their comrades, that they have, and are still withdrawing themselves, and proceeding to Philipton, there to get together those who are still faithful. How long the wreck of my property saved may be left to me is a mere matter of speculation, for if the loyalists are attacked by the rebels, and as *might* is *right*, and the weaker must give way to the strong, my property, as well as theirs, will be at the mercy of the marauders. I was not escorted by the rebels. My escort was composed of persons who had fled to Philipton and Eland's Post (none having been furnished to me from Fort Armstrong), and, as far as I can judge from their faithfulness to me, are true and loyal subjects of Her Majesty. In going through Fort Armstong, I saw the chiefs of the rebels, with several of their followers, in the camp. After leaving Mr. Thomson, who was there, I left the camp without speaking to any party there, and proceeded on my way. The rebels preceded me for a mile, and then turned off to their encampment, whilst I passed with my escort through the country held by the rebels, in safety. Mr. Thomson's son, Rev. Jas. Read, junr., Field-cornet Cobus Fourie, his three sons, David Scheepers, and several other stanch men, formed my escort. If they are rebels, then I must be one also. Their treatment at Fort Beaufort I shall leave to others to describe; all I shall say is, that it was such as to add to the ranks of the enemy men who, by their actions, have hitherto proved their loyalty. I tried, and I hope succeeded, in allaying the feelings excited in the minds of these unfortunate men, who thought that they were showing me a mark of respect, and manifesting their loyalty to Government, in bringing me through the dangers which surrounded them on every side; and to the latest moment of my life, I shall with gratitude acknowledge their services, not only on that occasion, but also on various other occasions. Andries Botha has been too much mixed up with his sons, who have for a length of time shown they cared nothing about him; for since his marriage to his present wife, they have treated him not as a father, but as an alien to his family. Let his conduct be inquired into, and he will be able to show where he was, and what service he was doing. When he was accused as being with the enemy, he was chiefly with me; and from the first moment of the defection of his field-cornetcy, and of his sons, kept himself as close to me as he possibly could. I shall say no more. Time will show his real character. As far as he acted under me, I found him a most deserving officer.

"The pillaging of the stores was not done by the rebels. It was done, I regret to say, by persons under the immediate command of Commandant Groepe, who used no means to restrain his people. This was done after I left Fort Armstrong; for seeing the excited feelings of the people, the defection

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which had taken place, the uncertainty of knowing friend from foe, loyal from disloyal, I deemed it prudent, after the English part of the community resolved to leave that camp, to proceed to Philipton, and where, from circumstances which came to my notice, discovered from parties who had left Fort Armstrong from disgust at the conduct pursued there, that had a shot been fired on the day that the rebel Hottentots and Kafirs showed themselves in force before Fort Armstrong, we should have been in the most dangerous position. It was not the enemy outside the camp we had to dread, for they kept at a respectful distance, but the enemy in our own camp. The Hottentots and Bastards are mad, they are running headlong into a gulf which they will bitterly repent of; but they are so infatuated and so bitterly exasperated against the English and Fingoes, that it will take years to eradicate the feeling now existing.

"We were not blocked up in the tower. Had it come to that, it would have been like the black hole of Calcutta. Had it even been so, we might have kept off the enemy for some time, but we should ultimately have been obliged to surrender, unless assistance had been sent to us. As it was, it is fortunate no shots were fired; and the English portion of the community cannot but acknowledge that it was through the Rev. James Read, jun., and some other loyalists, that their lives were saved, and that they got through in safety to Whittlesea. Their wives and families are now at Philipton, under the protection of Mr. Thomson, Messrs. Read, and the few loyalists there.

"There are still men stanch and true in the Kat River, who mourn over the defection of their brethren. These men I am collecting at one place, and my object in coming here has been to get assistance to break up the unnatural confederacy existing between the Kafirs and the Hottentots."—*G. T. Journal, Feb.* 8, 1851.

E.

The grounds upon which the Court disallowed Mr. WATERMEYER'S objection to the admissibility of certain evidence,—omitted in the report, but subsequently published in the *C. T. Mail.*

[See Trial, page 81.]

The Chief Justice, after Mr. Watermeyer had replied to the Attorney-General, said,—It was considered that the Ordinance No. 72 related wholly to the personal competency of the witnesses as such, and to such evidence as such as would be admissible or sufficient to convict of high treason in the courts at Westminster; but had no relation to, and could not be intended to introduce, or extended to the introduction of, the mere forms and mode of the criminal procedure in those courts previously to the trial, and referable only to the manner in which it should be brought on before those courts. The ordinance only and wholly applied to the trial; the statute entirely to the preliminary

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proceedings before the trial. Any other construction of the ordinance would be in conflict with the whole course of the criminal proceedings in the colony under its laws, ordinances, and practice; and a collision so evident, could never have been intended provisions formed for the purpose of preventing the conviction for treason upon any other evidence, and by such witnesses only as were competent and sufficient thereto in the Courts of Westminster. That the statute of Anne, ch. 21, was an act for improving the union of the two kingdoms of England and Scotland, whereto nothing could be more conducive. The preamble states that the laws of both parts of Great Britain should agree, as near as may be,—especially those laws which relate to high treason, and the proceedings thereupon,—as to the nature of the crime, the method of prosecution and trial, &c. The statute therefore specially applied to, and was for the protection of, Her Majesty's subjects in Scotland; and the provisions thereof applies wholly to the trials of such subjects, as to the enactment, "that a list of the witnesses that shall be produced on the trial for proving the indictment, and of the jury, mentioning the names, profession, and place of abode of the said witnesses and jurors, be also given at the same time that the copy of the indictment is delivered to the party indicted; and that copies of all such indictments, with such lists, shall be delivered to the party indicted ten days before the trial, and in the presence of two or more credible witnesses." That in the criminal procedure of the colony there had been made no such distinction; but the same and like proceedings in all cases of criminal offences, whether of treason, murder, theft, or any other crimes,—while no such notice could be taken as having been given to the prisoner as would satisfy the requisitions in the English statute. But if the objection could now be entertained as valid, that the same had been taken too late, so as to bar the same when, and as taken under the decision of the Queen vs. Frost, as the public prosecutor had been thus deprived of the liberty of postponing the trial, as he would have done if made before the prisoner's plea,—which, if allowed, would operate as a stay, and defeat the public justice, deeply affecting the interests of the crown and the subjects thereunder within the colony.

F.

Letter from Sir A. Stockenstrom to the Secretary to Government.

[See Attorney-General's Summing-up, page 172.]

The Hon. the Secretary to Government.

Sir,—It causes me no small degree of annoyance to be compelled to add an appendix to my letter of the 1st instant, written in answer to yours of the 11th of last month; but an occurrence has since taken place, which is inseparably connected with the subject matter of the said correspondence, viz., the state of this frontier. Last Tuesday, the 9th instant,

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arrived at this place, Field-cornet Andries Botha, of Kat River. This man is a rude, unlettered native functionary, but Her Majesty has not in her dominions a more loyal subject, nor braver soldier; and by his services during the Kafir wars of 1835 and 1846, he has conferred a lasting obligation on the colony and its Government. He addressed me, as nearly as I can give them literally, in these words, viz.:—

"I know that your usual answer will be that we are mad in coming to you with our grievances, as you are nothing more than a boer in the land; but unless you die or fly the country, you shall have to hear the groans of every oppressed class in South Africa; and such is the state of excitement in the Kat River at present, that without some assistance or advice, I do not know how to prevent serious consequences. You must remember the immigration of some families of the Gonaqua Hottentots into the Kat River Settlement, some twenty years ago, many of whom obtained erfs, and others promises of similar grants. They are, and consider themselves as much Her Majesty's subjects as I am, and as such did burgher duty and fought bravely for the British Crown during both the Kafir wars. They paid taxes to the Colonial Government as long as they were exacted; were a tower of strength to the rear districts, and there never was a complaint against them. Some time since, a number of Kafirs came and squatted down in the settlement;—the inhabitants requested that they might be removed. Accordingly, this was done under the direction of the Civil Commissioner of Fort Beaufort, but immediately after this proceeding, the Kat River Magistrate, heading a body of *Kafir Police*, caused to be burnt out, not only those who had come in since the war, but the Gonaquas to the last, who had been twenty years in the settlement, with all the Fingo servants. Not a moment's warning was given. I remonstrated,—the Hottentots intreated for their friends in vain; nothing availed, neither the cries of the children nor the tears of the mothers, some of whom were in child-bed, with babes of three or four days old, on one of the coldest days of this inclement season, and that on a Sunday (the day of peace, rest, and prayer),—when, even if the act had been lawful, there was not the remotest pretext for haste. The *Kafir Police* held the fire-brands ready to ignite the huts, while the inmates and property were being bundled out of them; the *Kafir Police* exultingly shouting: 'To-day we burn Botha out of the Blinkwater as he burnt us out of the Amatola last war.' The Police took possession of all the cattle, some of which has been lost. Thus, about fifty families have been burnt out, who were our friends, protectors, and defenders in two wars, and driven like felons and outlaws, among the very enemies against whom they fought, and at whose mercy they will be. The Magistrate has dismissed me,—why, I cannot tell. Is it possible that British subjects have to submit to such treatment?

"Now, here you have another case. In Lower Blinkwater, *the commonage belonging to* and *measured out for the village* has been given to a white man who has been appointed Superintendent. It is, of course, quite impossible to keep from the land the cattle of the villagers to whom this land belongs, and which cattle has been for years accustomed

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to graze thereon. The consequence is, that the cattle of these villagers, the lawful proprietors of the land, are almost daily impounded by the said Superintendent, who enriches himself by the penalties which he claims as damages. Can human forbearance long submit to such galling oppression?

"We have lately had a case in which the Magistrate sentenced some persons to enormous fines, and others to hard labour. The sentence was carried into execution; the Government found it so unjust that it ordered the money to be returned; but for those who were dealt with like felons, there is not a shadow of redress!"

My answer to Botha was this:—"You are not without remedy. If the Local Government can give you no redress, you have the Colonial Secretary of State to complain to, and failing there, your appeal lies to Parliament. For despair there is no cause. The Sovereign assuredly wishes you to be governed with justice and equity."

To the agitated complainant I deemed it unnecessary to say more; but to Her Majesty's Ministers and the twelve Judges in Westminster, I would respectfully submit the question whether there exist any power on the face of the earth competent to march an armed force—especially one composed of what we are pleased to call "irreclaimable savages and untameable wolves"—into the colony, to destroy the property of, and maltreat and oppress, Her Majesty's peaceful loyal subjects, in the manner above detailed? Are these the objects for which the Kafir Police is organised? Then it may become an instrument of tyranny against the whole colony, for what is lawful to be done to the inhabitants of Kat River, is such to those of Cape Town and Stellenbosch; and I should like to know what the men of Kent would say to a body of Gens-d'armes brought across the Channel, burning houses, driving their wives out of child-bed with their sucklings into the highways in a December storm, on a blessed Sunday, and expelling men, women, and children from their lawful homes, to be forced upon a barbarous foe, so lately beaten by them, and thirsting for revenge! That the Gen-d'arme would be civilised, and the policeman a "savage" or a "wolf," only makes the Kat River case ten times worse; and that the one receives French and the other British pay does not affect the principle nor alter the Kafir's feelings towards his conqueror, thus placed at his mercy. I shall not stop to ask the several municipalities of the colony how they should relish to see *their* commonage given to individuals, functionaries or not, who enrich themselves by sending *their* cattle to the pound *from off that commonage;* nor need I dwell on the possibility of a repetition of men being condemned to hard labour, by mistake, ignorance, or downright injustice. My object is,—since the Governor has opened the discussion, to unmask, as I have before said, the true state of affairs on the Frontier. We may be sure, that some of the newspapers will trumpet forth the above Kafir Police doings in the Kat River as a glorious exploit, and as a notable specimen of the admirable working of "the present system." This may be believed here and at home, until suddenly the Chancellor of the Exchequer may have to ask the House of Commons once more for a million or two on account of another Kafir war,

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which will be traced to the Governor's successor having done something to disturb *the system.*

The Kat River people, so lately and so justly considered one of the most loyal communities in the colony, after having been twice mainly instrumental in saving the colony, and being rewarded by malicious calumny and the denial of justice, have from later events, taken it into their heads that a plot exists somewhere to goad them on to some excess, and furnish the plea for their expulsion from the only nook in the land of their fathers which remains to them, and, in which they hoped to rest the last ashes of their expiring race. Of the present feelings of these men, Botha is a specimen. Beyond the Vaal River, we see "*rebellion effectually crushed*" in the transactions going forward between *Republicans* and British travellers. The state of the Griquas and the Basutos is depicted in the statements of Secretary Hendriks, which can be proved to the letter. The peace in Kafirland, I have described in my letter of the 1st instant, and that between the Tambookies and boers is exhibited in yours of the 11th ultimo. So that our present "frontier relations," divested of newspaper and other varnish, will be found as "comfortable" as they were in 1836, when we could not prevent the destruction of a witch in the midst of a British army, and under the nose of a British Magistrate, when we could not make an enemy whom we had "completely subdued" give up a single horse, cow, ox, or musket which he had taken from us; when all was insecurity, chaos, and anarchy; and when British subjects were moving off *en masse*, to unburthen themselves of our happy rule. Such are the facts which an honest inquiry will exhibit.—I have, &c., A. STOCKENSTROM.

Maastrom, July 11, 1850.

G.

Extracts from the *Graham's Town Journal* and *Cape Monitor*.

[See Mr. Watermeyer's Summing-up, pages 186, 190, and 199.]

ANDRIES BOTHA.—This notorious rebel Hottentot field-cornet is at present in Graham's Town prison, as a witness in a case to be heard before Mr. Justice Bell. The Attorney-General has indicted this specimen of Kat River loyalty for treason and conspiracy; but his trial will not take place before the ensuing Circuit Court.—*G. T. Journal, Jan.* 17, 1852.—Reprinted in *Cape Monitor, Jan.* 24.

ANDRIES BOTHA.

TO THE EDITOR: SIR,—Will you allow me to trouble you with a few remarks on the subject of the proceedings against Andries Botha, late Field-cornet of the Kat River, now, I believe, a prisoner at Cape Town, awaiting his trial on suspicion of being concerned in the present rebellion of the

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Hottentot race? You, sir, are aware there are at Whittlesea a goodly number of loyal subjects of Her Majesty who were compelled to flee from Fort Armstrong through the said rebellion. It is to these individuals a source of surprise that "Botha" should have been sent to Cape Town at all. Why could he not have been brought to trial on the Frontier, where evidence and proof of his guilt could be readily obtained? Is it intended that the ends of justice should be defeated, and this "*Arch Rebel*" allowed to escape? Or have the Government such abundance of spare cash that the expense of dragging witnesses 7 or 800 miles is no object? A report has reached us here that the rev. tutors of this man—the ministers of Philipton,—are collecting evidence in his favour, and that they are about to proceed, or have proceeded, with three of their flock, to Cape Town, to defend him on his trial. Under these circumstances, we are anxious to know who and what are the evidence against him. What is the public prosecutor doing to support the charges it is presumed he intends to bring? Are the people who saw him head the rebels in the attack on Post Retief summoned? Is "Allison," whose house and wagon were robbed by him, and he himself chased to the walls of that fort? Why are the Kat River refugees not called upon? They can prove he held communication with the rebel camps both before and after the days of grace allowed by His Excellency. If these people are brought forward, "Botha" will be convicted. But this will not suit the agents of a certain Society—for in all probability he would then make disclosures which will inculpate some of those agents, *only suspected* at present.

I remain, &c.,

A Kat River Refugee.

Whittlesea, 7th March, 1852.

[The examinations in the case of Botha were, we believe, taken by the Clerk of the Peace for Alice; and relying upon Mr. Haw's probity, we feel persuaded that all evidence necessary to this traitor's conviction will be called. If "Allison" is an important witness, he certainly ought to be subpœnaed,—as the trial does not concern one man, but a whole community.—Ed.] *G. T. Journal, March* 20, 1852.—Reprinted in *Cape Monitor* of March 27.

ANDRIES BOTHA.

To the Editor: Sir,—By inserting the following in your *Journal*, I shall feel much obliged, as I consider it to be a very hard case. I shall confine my statement to what concerns myself, leaving others to think of it as they please:—

On the 1st March, 1851, I arrived at Alice from the Kat River with the government forces, having been released from prison at Philipton by Major-General Somerset on the 25th February. While in Alice, I was applied to to give all the information I could respecting the Kat River rebellion. This I gave conscientiously to the military authorities there; and was most positively ordered not to leave, in case I might be wanted at any time. I was often at the Major-General's quarters, and at the Brigade Office, to tell what I knew of several parties who had been sent in from Eland's Post as

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prisoners, one of whom was Andries Botha; and if the authorities had summoned the persons I advised them, they never would have had occasion to send him to Cape Town for trial. The yellow horse, saddle, and bridle would at that time have fixed his fate, with the evidence that Mr. W. Currie could have given respecting the 22nd February; but I did my duty, and was detained (being summoned) from the 14th March (leaving out all the previous days) until the 30th April, and was promised to be paid for my time. This I fully expected, and much needed. I was daily attending on the Court-martial, and I do declare, that if the other white men who came from Philipton with me had acted towards their Queen and country as I have done, then nine out of every ten that came out of Kat River would have been proved guilty of the same crimes as those who were sent away; but no white man would remember anything. When the court was over, I expected my payment, but was told I must wait. I waited with patience until the beginning of this month, when I memorialized the Governor, and received on the 8th instant a reply to the effect that my request could not be complied with, on the ground that I was rationed at the public expense. Thus, after being forty-six days detained at Fort Hare or Alice, with a wife and five small children in Beaufort dependent on my earnings, completely ruined by the very miscreants I was endeavouring to prosecute, with good promise of payment from the Major-General, I am now told by His Excellency that I am not to get anything! This is very hard; not that I regret doing what I have done, or taking the interest I did in the prosecution of the rebels; but if the coming Court of Inquiry is to be conducted in the same manner, to summon whom they like, and not pay the witnesses, I fear they will find but few who will be able to come forward.

Before closing, I must make a remark upon the case of Andries Botha. Most, if not all, of the witnesses that I know, who have gone upon that important case, were very suspicious of him on the 23rd January, 1851; some of them are personally implicated in plundering the English on that occasion, and one, if not more, was with the rebels at the attack on Wiggle's place. The chairman of the grand meeting held at Philipton on the 20th October, 1850, is also one of the witnesses, and one of the principal movers of the resolutions then passed. Botha is well aware of this, so that you may expect they will be very cautious in giving evidence against him; but all I wish is that the truth will come out. Mr. Read and Groepe must be very careful as to what they say against Botha. I am, &c., JOHN GREEN.

Fort Beaufort, March 20, 1852.

—*G. T. Journal, March* 27, 1852.

The notorious Andries Botha, late Field-cornet of the Kat River Settlement, has been sent down by the "*Styx*," in custody, to await his trial for treason, before the Supreme Court in Cape Town. The following witnesses, who are expected to be examined in this case, also arrived by the same opportunity; the Rev. W. R. Thomson, Field-cornet Groepe, Frederic Jordaan, Mango, Boko, Bempinie, Mani, and Biegon;

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also Hans Keister and Jacob Nieuwfeldt,—the two latter being in custody as rebel Hottentots, but who, we presume, will be pardoned if their testimony is made available.—*Cape Monitor, March* 10, 1852.

ANDRIES BOTHA.—On the 1st of May next, the trial of this individual will come on, for rebellion in the neighbourhood of the Kat River Settlement, in January, 1851. He is at present confined in the gaol of Cape Town, having been brought down by the "Styx." This trial is expected to develope some circumstances which have hitherto remained in obscurity relative to the causes of the present war.—*G. T. Journal, March* 20, 1852.

ANDRIES BOTHA.—Our attention has been called to apparent unfairness in the selection of witnesses in this case. Mr. John Green of the Kat River, it appears, has been omitted from the list of witnesses subpœnæd. The public will not now brook any palliation of this rebel's crimes; and it devolves upon the Crown Prosecutor to see that there is material at hand to sustain his indictment.—*G. T. Journal Extra, March* 30, 1852.

ANDRIES BOTHA.—In referring to Mr. John Green's letter on the subject of this rebel, we find that none of the Kat River European refugees have been subpœnæd on this trial. The unfortunate individuals are twenty-four in number, and nearly all of them personally acquainted with Botha,—many of them even, we understand, are cognizant of his acts. Mr. E. R. Bell has already at a public meeting made known his acquaintance with the facts of the rebel movements in which Botha is implicated. Why has he not been summoned? Why has John Green not been summoned? Mr. Eaton, formerly Clerk of the Peace for Albany, is held to be in possession of some letters, or of a knowledge of some letters, that bear upon this case—why has he not been summoned? From what we can gather, the witnesses for the prosecution have been unfairly selected. The removal of the prisoner to Cape Town has its precedent, and cannot be found fault with;—but the court, wherever it sits, ought to have such evidence before it as may lead to equal justice, and the vindication of the law, and not render this rebel's arraignment, as we very much doubt it will prove, to be mockery and an insult to every loyalist of every grade and every colour.—*G. T. Journal, April* 3, 1852.

H.

First Indictment served on the prisoner, on which he was to take his trial on the 1st May,—but which was withdrawn on that day, when the

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Indictment on which he finally took his trial (p. 1) was served.

[See Mr. Watermeyer's Summing-up, page 187.]

SUPREME COURT OF THE COLONY OF THE CAPE OF GOOD HOPE.

The Jurors for our Sovereign Lady the Queen, upon their Oaths, present:—

That ANDRIES BOTHA, now or lately an Agriculturist, and now or lately residing at Philipton, in the District of Stockenstrom, is guilty of the crime of *High Treason*;—1st, in that, the said Andries Botha, being a subject of our said Lady the Queen, not regarding the duty of his allegiance, but, on the contrary, wholly withdrawing the fidelity and obedience due of right, by every subject of our said Lady the Queen to our said Lady, upon or about the Twenty-fourth day of January, in the year of our Lord One Thousand Eight Hundred and Fifty-one, and at Fort Armstrong, in the district aforesaid, with force and arms, together with divers other false traitors, armed and collected in a warlike manner, that is to say, with guns, being then and there wrongfully, unlawfully, maliciously, and traitorously assembled and gathered together, most wickedly, maliciously, and traitorously did levy and make war and rebellion against our said Lady the Queen, within this her settlement, and did, then and there, maliciously and traitorously attempt and endeavour, by force and arms, to subvert and destroy the government of our said Lady the Queen within this settlement, as by law established, and did, then and there, in furtherance, of the said war and rebellion so levied, with force and arms, assault and illtreat divers loyal subjects of our said Lady, then in her service and employment, to wit, one Biyosi, one Klaas Mafee, one Nani, one Tabeni, and one Jiana, all now or lately labourers, whose residence is to the Prosecutor unknown, and did, with force and arms, take from the said last-mentioned persons respectively divers guns and horses, the property of our said Lady the Queen, and did counsel, advise, and instigate the other traitors who were then and there assembled to put the said Biyosi, Klaas Mafee, Nani, Tabeni, and Jiana, to death; and other traitorous acts, in furtherance of the said war and rebellion so traitorously levied, the said Andries Botha did do and commit.

2ndly.—As also, in that the said Andries Botha, being such a subject as aforesaid, not regarding the duty of his allegiance, but, on the contrary, wholly withdrawing the fidelity and obedience due, of right, by every subject of our said Lady the Queen to our said Lady, upon or about the Twenty-fifth day of January aforesaid, in the year aforesaid, and at Fort Armstrong aforesaid, with force and arms, together with divers other false traitors, armed and collected in a warlike manner, that is to say, with guns, being then and there wrongfully, unlawfully, maliciously, and traitorously assembled and gathered together, most wickedly, maliciously, and traitorously did levy and make war and rebellion against our said Lady the Queen, within this her settlement, and did, then and there, maliciously and traitorously attempt and endeavour, by force

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and arms, to subvert and destroy the government of our said Lady the Queen within this settlement, as by law established, and did then, and there, in furtherance of the said war and rebellion so levied, assault and illtreat divers loyal subjects of our Lady, to wit, one Mango, one Boko, and one Pempini, all now or lately in the service of our said Lady, as members of a certain Military Force, commonly called the Alice Fingo Levy, and did, with force and arms, take from the said last-mentioned persons respectively divers horses, guns, arms, and accoutrements, and did counsel, advise, and instigate the other traitors who were then and there assembled to put the said Mango, Boko, and Pempini to death; and other traitorous acts, in furtherance of the said war and rebellion so traitorously levied, the said Andries Botha did do and commit.

3rdly.—As also, in that the said Andries Botha, being such a subject as aforesaid, not regarding the duty of his allegiance, but, on the contrary, wholly withdrawing the fidelity and obedience due, of right, by every subject of our Lady the Queen to our said Lady, upon or about the Seventh day of February, in the year aforesaid, and at some place in the district aforesaid, situate close to Lushington, which place the Prosecutor is unable more particularly to describe, with force and arms, together with divers other false traitors, armed and collected in a warlike manner, that is to say, with guns, being then and there wrongfully, unlawfully, maliciously, and traitorously assembled and gathered together, most wickedly, maliciously, and traitorously did levy and make war and rebellion against our said Lady the Queen, within this her settlement, and did, then and there, maliciously and traitorously attempt and endeavour, by force and arms, to subvert and destroy the government of our said Lady the Queen within this settlement, as by law established, and did, then and there, in furtherance of the said war and rebellion so levied, take counsel with, advise, incite, and command certain other false traitors then and there being, to wit, one Willem Uithaalder, now or lately a labourer, whose place of residence is to the Prosecutor unknown, and one Macomo, a Kafir, whose occupation and place of residence are to the Prosecutor unknown, touching and concerning the manner in which the said war and rebellion, so levied as aforesaid, might be most effectually prosecuted; and other traitorous acts, in furtherance of the said war and rebellion so traitorously levied, the said Andries Botha did do and commit.

4thly.—As also, in that the said Andries Botha, being such a subject as aforesaid, not regarding the duty of his allegiance, but, on the contrary, wholly withdrawing the fidelity and obedience due, of right, by every subject of our Lady the Queen to our said Lady, upon or about the Twenty-third day of February, in the year aforesaid, and at Van Beulen's Hoek, in the district aforesaid, with force and arms, together with divers other false traitors, armed and arrayed in a warlike manner, that is to say, with guns, being then and there wrongfully, unlawfully, maliciously, and traitorously assembled and gathered together, most wickedly, maliciously, and traitorously did levy and make war and rebellion against our said Lady the Queen, within this her settlement, and did, then and there, maliciously and traitorously attempt and endeavour, by force and arms, to subvert and destroy the govern-

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ment of our said Lady the Queen within this settlement, as by law established, and did, then and there, in furtherance of the said war so levied, aid, comfort, and assist certain other traitors then and there armed and arrayed against our said Lady the Queen, and did supply one of the said traitors, to wit, one Christoffel Botha, whose occupation and place of residence are to the Prosecutor unknown, with a horse, a saddle, and a bridle, to be used by him in prosecuting the said wicked war; and other traitorous acts, in furtherance of the said war and rebellion so traitorously levied, the said Andries Botha did do and commit.

WILLIAM PORTER, Attorney-General,
Who prosecutes for and on behalf of Her Majesty.

I.

Extracts from the *Commercial Advertiser* and *Cape Town Mail.*

[See Remark of Chief Justice, page 190.]

"The criminal calendar contains some heavy offences this session, which was opened by the Chief Justice on Monday, with a warm eulogium on the institution of grand juries. One charge is for high treason, alleged to have been committed during the rebellion on the Frontier. The principal witnesses produced before the grand jury have already been convicted of that offence, and were condemned to suffer death, but the sentence was commuted for transportation, with hard labour, for life."—*Commercial Advertiser, May 5.*

"To-day will come on a trial for high treason; the first of this high nature in the Supreme Court of this Colony since its establishment. The accused is a *native* colonist, who has distinguished himself for loyalty and courage in border wars all his life, particularly in the wars of 1835 and 1846. He is accused of wavering for a time at the beginning of the present war in 1851. The chief witnesses against him are Fingoes—the inveterate enemies of his race—and convicts at this moment undergoing the punishment of imprisonment with hard labour *for life.* Trials for treason are always tainted with political feeling. This man, since his arrest, has been pursued by a portion of the Frontier press, and by some individuals there, with a blood-thirstiness positively diabolical. It is too apparent that vengeance, not justice, is their aim, and some have not scrupled to avow it. The court and jury will, of course, dismiss all such incitements to rash and precipitate judgments from their minds, and the public will regard with deep interest the proceedings in a case that will serve as a precedent for or against themselves and their posterity for ever.

"The chief thing to be considered by the public in this case, is the admission of witnesses who have nothing to fear from perjury, in this world. The only hold you have on them is in their *religion!* And they may hope for some mitigation of their doom if they give evidence which they may naturally suppose agreeable to the prosecution,—that is, the Government.

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In a similar case, but not precisely the same, a witness was produced by the Crown in an English court of justice, who had been convicted of a high offence. He was challenged, and after much discussion, he was heard; "*but*," says the historian Macaulay, "*the jury very properly refused to believe him.*" The cases are not exactly the same, for the witness in question had expiated his sentence. He was still liable for perjury. It is otherwise with these witnesses in the present case. The crime of perjury will add nothing to their doom. This is a consideration of the highest importance, both with regard to public liberty and the personal safety of every man in the community."—*Ib.*, *May* 12.

"The trial of Andries Botha for high treason, which commenced on Wednesday, was still proceeding last night. The witnesses for the prosecution were still under examination. The law of England is very jealous of the liberty and life of the subject in cases of treason. It assumes that a person under a charge of treason labours under disadvantage in having to defend himself against a prosecution in which so powerful an adversary as the Crown is interested; and therefore amongst other provisions the statute of 7 William, c. iii., s. 2, enacts, 'that no person shall be convicted except on the evidence of two lawful witnesses, and declares in Sec. 3, that if two or more distinct treasons of divers heads or kinds shall be alleged in one indictment, one witness produced to prove one of the treasons, and another witness to prove another of the treasons, shall not be deemed to be two witnesses to the same treason within the meaning of the statute.'—The following are the names of the jury in this case:—R. Langley, A. A. Bruins, H. Nelson, F. Pocock, J. J. Jurgens, W. Gilman, J. C. de Villiers, P. J. Botha, and H. Peck."—*Ib. May* 15.

"It seems that the principal witnesses examined before the grand jury, in the case of high treason which is about to be tried, are persons under sentence of imprisonment for life. This looks a formidable affair. It seems certain that the law, at present, does not actually *prohibit* such witnesses from being examined before a jury. Formerly, no man under conviction could be examined; but this has been altered lately, and the principle has been introduced that any witnesses may be heard, the jury deciding, in their own minds, to what extent they are worthy of credit. This removed certain disqualifications, whose existence was felt as an evil. Yet it must be remembered, that a convict for seven years speaks in court under the penalty of further punishment if he perjures himself. But what penalty is feared by a convict for life? He has no dread of punishment if he be found to speak untruth, while, on the other hand, he has the inducement of pleasing the party who can lessen his bondage, to commit perjury in that party's favour. That party is the government,—the prosecutor in the pending trial! Surely, such a working of the new law was no part of the original intention of its framers."—*C. T. Mail*, *May* 8.

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"The case now before the Supreme Court for high treason is one manifestly in which, for their own sakes, the members of the Government are anxious to secure a conviction. In an ordinary case of murder, or theft, there would be no occasion for any extreme degree of warmth on their side. Pity for the prisoner, and a feeling of the necessity of securing society against the repetition of his crime, by himself or others, would chiefly sway the prosecutors, and all paid servants of the crown connected with the cause. But here is a cause which is now before a jury, and of whose merits, of course, it is not proper to say one word further, before the trial shall have been concluded; *then*, its manner of prosecution out of court, and the manner of its conduct within court, will become fair subject of public discussion. Yet, before it appeared before that jury, and while the prisoner was, and is yet, awaiting his trial, the newspapers connected with the existing, or late Government, were and are indulging in constant execrations of the man, as if he had been already condemned, and was already awaiting the execution of his sentence.

"More than this:—before he was aware that he was ever suspected, and while he was yet performing,—as even his enemies admit,—the loyal duty of conveying his magistrate to a place of safety, another paid servant of the crown was taking depositions against him, and was forwarding those depositions to his superiors in Cape Town; and the government was the instrument of the instant publication of those depositions in the newspapers of the colony, and in the Blue Books of the House of Commons. While yet he was kept uncertain, whether he would be tried or not,—and even after he had been discharged by one court that might have tried him, because no evidence appeared against him,—despatches from the Governor conveyed to England opinions respecting his guilt, which were instantly printed there. What must be drawn from all this? That the present is not a case in which such impartiality and independence may be presumed of the "Crown" and its servants, as exist in ordinary criminal trials. And hence, that there really are cases in which peculiar safe-guards are needed to prisoners, even in this colony. That state trials are more possible in this colony than seems to have been believed by the Council of 1844. And that when the charter of justice is reformed by the future Parliament, the Parliament should not forget to provide for subjects of the Crown at the Cape of Good Hope every protection against the power of the Crown, in cases in which the Crown is concerned, which has been from time to time thought needful to be provided by statutes of the Imperial Legislature, or by the practice of the English courts.

"And, indeed, it seems very arguable that all privileges and protections given to the subjects of the Crown, with reference to questions arising out of their allegiance, are equal in every part of the Queen's dominions:—and that the instant they are given, or admitted in England, they become the property of every one who acknowledges British Sovereignty."—*Ib.*, *May* 18.

"A Correspondent writes, expressing some opinions respecting the treatment to which a witness, on Saturday evening,

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was subjected in Court. He is reminded of the necessity that such discussions as these should be postponed till the conclusion of the case."—*Ib.*

K.

Letter of JOHN GREEN, published in the *Graham's Town Journal* of May 24, 1851.

[See Mr. Watermeyer's Summing-up, page 199]

THE REV. H. RENTON AND THE KAT RIVER.

TO THE EDITOR: SIR,—Much has been written about the rebellion in the Kat River by parties at a distance from the scene, and no doubt much more will be written. Perhaps it is matter of wonder that no eye-witnesses have written to any of the newspapers; but for my own part I have had my own reasons for my silence: the principal one being that I was waiting to see if the missionaries, or any of the six ordained ministers who were residing at Philipton, exclusive of Mr. Thomson, would come forward and state their own case. The names of the missionaries I refer to are as follows:—Mr. Renton, Messrs. Read (2), Mr. Niven, Mr. Cumming, Mr. A. van Rooy. I was desirous of seeing whether any one of these would come honestly forward before the public, and declare, without partiality, the wickedness, the deceit, the robbery, and the murderous designs carried on in that settlement, and by that professedly christian community! and acknowledge fairly that they were deceived by their people. This course I really thought they would have taken for their own sakes, and for that of the societies to which they respectively belong. I expected that they would have done this as soon as they arrived at Fort Hare, and that the evidence they would be called upon to give at the Court-martial would at least correspond with their statements in the Kat River, saying, they could sympathise with none of the rebels. The world, however, ought to know that their conduct at Fort Hare has been quite the reverse of this.

Omitting to make any remarks (at present) on the evidence given by some of these rev. gentlemen, I do assert, fearless of contradiction, that they have done great discredit to their profession as preachers of the Gospel and professed servants of the God of truth.

I am one of the party that fled from Fort Armstrong on the 23rd of January. I can give reason that will satisfy the world why I stopped at Philipton. At that time, little did I think that that place was soon to become the harbour, or half-way house or hiding place, of any rebels who chose to stop there. I little thought that this would be allowed by their ministers, and that they would be permitted to act as they pleased. The magistrate and his servant also remained. Mr. Thomson and Mr. Read, sen., stopped at Fort Armstrong, with most of the English families, on that memorable night when they were eye-witnesses to the breaking open and robbery of the shops. That night and the next morning, in open daylight, these gentlemen saw the rebels dividing the cattle;

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they knew personally every man, woman and child engaged in the plunder of our shops; they saw our houses taken possession of, and this in open daylight; they could tell me at Philipton that the despoilers had guns in their hands, and that it would have been dangerous to interfere; they knew that most of the people so acting were, and I believe still are, members of one church or another. The professed rebels of the four camps at the Blinkwater were not there, to whom our property was assigned by Groepe, in the presence of Mr. Thomson. The principal parties concerned in this outrageous plunder were the residents of Fort Armstrong. All this, and ten times more, these gentlemen knew,—but perhaps they have forgotten it, although I have not, nor can I. They have seen many of these guilty men brought before the mock court at Fort Hare, as witnesses in favour of the prisoners!

The next day, or rather the day in question (namely, the 24th of January), the poor women and children got to Philipton in a state scarcely describable, but of which I shall give an account hereafter,—suffice it now to say, the sight was enough to make any man's heart bleed. The next day our anxiety was increased by the appearance of the rebel commandant, and the more so when he was seen to be so friendly with the people living there. Mr. Read, jun., and Mr. Thomson did, I believe, all in their power to get what things they could for us, and had it not been for the help of some of the Philipton people, we should only have had just what was on our backs. (I know their names.) They succeeded, at great danger to their own lives, in obtaining most of our bedding, part of our clothes, and a little of our food. This is a brief outline of one day's experience in Philipton.

Here the public may naturally ask,—Did the great enemy of the colony know anything of this, and also Messrs. Niven and Cumming? They did, and twenty times more. And what did Mr. Renton do? He himself says he did all he could to put down the rebellion! This statement is false, in the fullest sense of the word; and though he complains of the number of questions put by your Graham's Town Committee, I propose to favour him with a few more,—believing he has been misled, and if so, it will be no degradation to him, as a minister of the gospel, to acknowledge it, and to furnish the public with his authority for the part he has taken in the matter in question. It is good to be zealous in a good cause, but it is equally wicked in a bad one; and a wise man will change his opinion of things and people if he can see reason for so doing. The *truth* is all I ask, and if I can be convinced that I have formed a wrong opinion, I will at once make an apology. I am prepared to meet the rev. gentleman before any tribunal or any commission, if Mr. Renton thinks proper to answer these questions as a preacher of truth, and by doing so it may save me from publishing more. This I state deliberately. The questions I propose, I put in the following plain language:—

1.—What ground had you for saying to Mr. Wienand, the day he arrived at Philipton, that the people of that settlement had so long been oppressed by the former authorities, that it was too late to rectify the damage when he came in? Did you personally know Mr. Bowker, or did you form your opinion of that gentleman by hear-say?

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2.—You have stated you did all in your power to stop the rebellion. Did you ever exhort the people to that effect, or even tell them of the evil consequences of their doings? You cannot speak Dutch, but were you ever at a loss for an interpreter to tell you everything about Pringle or the English at Whittlesea? Had you not great reason to believe these statements were false, and did not your interpreter believe they were so?

3.—Do you regret, or will you acknowledge, that, as a deputation from Scotland and a minister of the Gospel, you lost much time, and missed many opportunities of doing good, in neglecting to assist the destitute, the fatherless, and widow?

4.—Did you not consent to be introduced into Philipton chapel, before the excited audience there assembled, the day the party returned from Fort Beaufort? Did not Mr. Read, sen., introduce you, and did he not represent that you were the gentleman who had their cause in hand, and who was shortly going to England, where you were acquainted with nobles or men of rank, who would take up their case? Did you not, after such introduction, engage in prayer, bemoaning at every sentence the war with the Kafirs, and the conduct of the English towards the Hottentots?

5.—After hearing the sad tidings, as you believed, from Shilo, why did you, in a discourse which you delivered the following Sunday from Acts 17, and part of 26th verse, endeavour to wound the feelings of the women, already so sorely afflicted, by describing the white man as the oppressor of the black?

6.—Why were you so friendly with the 32 Kafirs that came to Philipton on Saturday evening? Why did you not get some one to speak to them, there being no apprehension of danger,—none at least at Philipton till the 21st of February, when Sandilli came there?

7.—Why did you not believe the accounts brought by Mr. Thomson from Whittlesea, contradicting the statements of the rebels? Did you ask any of us whether we had received letters from our friends? Were you not told that all the statements made by the Hottentots were false, but did you make any effort to get a correct account?

8.—Will you oblige the public with a copy of the written account given you by Mr. Read, jun., in the presence of his father, on the 18th February, giving an account of the Hottentots from 1802 up to the present rebellion, stating their particular grievances against the whites—in which account the names of Borcherds, Collett, Biddulph, Bowker, Emmett, Godlonton, Blakeway, Gilbert, and all the English inhabitants, appear? Did you not, on receiving this account, express yourself in words to this effect:—That they (the Hottentots) had been oppressed, and if you had been used as they have been, you would have acted as they have done?

9.—Do you remember the conversation you had with me on the 31st February, about a deacon of Philipton church firing at one of the Fingoes, who was also a deacon or elder? Do you remember that I told you there were four deacons or elders who were considered as being leaders in the rebellion?

10.—Do you not admit that, on the evening of the 26th February, after you and myself had had a dispute about the wagons being searched, that you and Mr. Niven came to me to

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know if I would not admit that at Philipton British authority had been maintained, and that on my refusal to admit any such thing, did you not say, then it was no use talking to me? Did I not tell you what you then knew to be true, and know so yet, that Philipton was a thoroughfare of the rebels?
—*G. T. Journal, May* 24. JOHN GREEN.

L.

The following Tables were prepared for the purpose of reference, if necessary, during the progress of the trial, to settle the date of occurrences and the distance between localities, —and were admitted as correct by the Attorney-General.

TABLE OF OCCURRENCES, WITH DATES.

Occurrences.	*Dates.*
Commencement of the Kafir War, ..	24th Dec., 1850.
Do. do. Hottentot Rebellion,	29th ,,
The Buxton Hottentots join the Rebels,	1st Jan., 1851.
General Somerset publishes a Proclamation offering terms to Rebels, and Fort White attacked by the Kafirs, ...	3rd ,,
Hermanus proclaimed a Rebel, ...	5th ,,
Hermanus and Rebel Hottentots attack Fort Beaufort, ...	7th ,,
Field-cornet Fourie and others carry General Somerset's Proclamation to the Rebel camp, Upper Blinkwater,	14th ,,
Fort Hare and the town of Alice attacked by the Kafirs, ...	21st ,,
Pringle's Burghers attack Casper Olivier's camp at the Mancazana.—Uithaalder's demonstration before Fort Armstrong,	22nd ,,
The English inhabitants abandon Fort Armstrong.—Mr. Wienand, the magistrate, retires to Philipton.—The pillage of the stores commences, ...	23rd ,,
Fort Armstrong in complete possession of the Rebel Hottentots and Kyampy's Kafirs.—Settlers' stores pillaged, and the seven Fingo post-riders deprived of their horses, ...	24th ,,
Mango and the two other Fingo post-riders arrive at Fort Armstrong, and are ill used and robbed of horses, accoutrements, &c.—"Kat River Loyal Burgher Association," formed at Philipton, ...	25th ,,
The Resident Magistrate of Kat River, Mr. Wienand, retires to Fort Beaufort, under a Hottentot escort, ...	29th ,,
Oxkraal Fingoes carry off live stock from Philipton, ...	30th ,,

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Occurrences.	*Dates.*
Whittlesea attacked by the Kafirs and Rebels, ...	31st Jan., 1851.
Whittlesea again attacked, ...	3rd Feb., 1851.
Post Retief attacked by the Rebels, ..	6th ,,
General Somerset orders all loyalists to assemble at Philipton, Hertzog, Eland's Post, and Balfour.	7th ,,
Whittlesea attacked (for the twelfth time) by the enemy, ...	9th ,,
Sogo, one of Sandilli's Umpakati, visits Philipton, and on behalf of his chief, demands delivery of the Philipton Fingoes and their cattle, ...	20th ,,
Sandilli enters Philipton, and carries off the Fingo cattle, ...	21st ,,
Fort Armstrong taken by assault by General Somerset's division, and Balfour by the Burgher forces, ...	22nd ,,
General Somerset encamps at Lushington	24th ,,
General Somerset's division enters Eland's Post, and subsequently, on the same day, Philipton, ...	25th ,,
Camp at Lushington attacked by Rebels and Kafirs, ...	26th ,,
Philipton abandoned by the loyalists, by command of General Somerset, who orders them to assemble at Eland's Post,	27th ,,
Field-cornet Andries Botha arrested, and sent as a prisoner from Eland's Post to Fort Hare, ...	March, 1851.
Court-martial assembles at Fort Hare, for the purpose of trying rebel prisoners, ...	18th ,,

TABLE OF DISTANCES, calculated by the Rev. W. R. THOMSON, of Balfour, at the rate of *six miles the hour.*

From Fort Armstrong to Balfour,	–	20 minutes,
,, ,, Hertzog,	–	20 ,,
,, ,, Philipton,	–	55 ,,
,, ,, Eland's Post,	–	1 hour and 20 min.
,, ,, Buxton,	–	50 minutes.
,, ,, Lushington,	–	2½ hours.
,, ,, Wilberforce,	–	1 hour and 40 min.
,, ,, Van Beulen's Hoek,		35 minutes.
,, ,, Wilsonton,	–	1 hour and 35 min.
,, ,, Tidmanton,	–	2½ hours.
From Balfour to Buxton,	–	1 hour.
,, ,, Philipton,	–	50 minutes.
,, ,, Van Beulen's Hoek,		15 ,,
,, ,, Hertzog,	–	45 ,,
From Philipton to Elands Post,	–	1 hour and 5 min.
,, ,, Hertzog,	–	The same.
,, ,, Buxton,	–	1 hour and 50 min.

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The witnesses for the prosecution were equally confident that Botha was in league with Uithaalder on the occasion of his demonstration at Fort Armstrong on the 22nd of January, that he prevented the loyal Hottentots from firing on the rebels. The witnesses for the defence maintain exactly the contrary. The Magistrate shews that Botha had his sanction for going out —

The commandant Greefe declares that Botha was ~~then~~ on that occasion loyal & faithful 137 and the assistant commandant Jacobus Fourie states (134) — ~~he~~ Botha said "he thought the order to fire ought to be given —

If therefore the evidence for the prosecution was not reliable on this point, why is it more so on any other point on which the evidence of the same witnesses conflicts directly.

Again why was not Botha indicted for intercepting dispatches, taking letters by force or by intimidation, a hindering their delivery which the witnesses would have sworn to — Why did not the Fingoe couriers demand to be conducted to the Magistrate the Missionaries or the commandants. Why were not the Magistrate, commandants & Missionary examined as to the receipt or otherwise of any letters sent by Government officers, which they ought to have received. Surely these Fingoes [illegible] shated by the Hottentots would not have

been sent to Lat Armstrong without some
urgent & important cause.
Either the prosecution should have failed
on the evidence of the Magistrate Wurrand
or he should have been prosecuted as an
[illegible]

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